

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE NORTHERN DISTRICT OF OHIO  
3           EASTERN DIVISION  
4           - - -  
5

6       IN RE: NATIONAL : HON. DAN A.  
7       PRESCRIPTION OPIATE : POLSTER  
8       LITIGATION :  
9       APPLIES TO ALL CASES : NO.  
10      : 1:17-MD-2804  
11      :  
12      - HIGHLY CONFIDENTIAL -  
13      SUBJECT TO FURTHER CONFIDENTIALITY REVIEW  
14      - - -  
15      January 10, 2019  
16      - - -  
17      Videotaped deposition of  
18      FRANK DEVLIN, taken pursuant to  
19      notice, was held at the offices of  
20      Zuckerman Spaeder, LLP, 1800 M Street NW,  
21      Suite 1000, Washington, D.C., beginning  
22      at 8:33 a.m., on the above date, before  
23      Michelle L. Gray, a Registered  
24      Professional Reporter, Certified  
          Shorthand Reporter, Certified Realtime  
          Reporter, and Notary Public.

21      - - -  
22      GOLKOW LITIGATION SERVICES  
23      877.370.3377 ph | 917.591.5672 fax  
24                   deps@golkow.com

<p style="text-align: right;">Page 2</p> <p>1 APPEARANCES:      2      3 BAKER &amp; BAKER, PLLC      BY: WILLIAM C. BAKER, JR., ESQ.      4 300 East Government Street      Pensacola, Florida 32502      5 (850) 433-0888      Wcb850@gmail.com      6 Smh@bakerlawemail.com      7 - and -      8 WEISMAN KENNEDY &amp; BERRIS, LPA      BY: JAMES A. DeROCHE, ESQ.      9 101 West Prospect Avenue, Suite 1600      Midland Building      10 Cleveland, Ohio 44115      (216) 696-7009      11 Jderoche@garson.com      Representing the Plaintiffs      12      13 ZUCKERMAN SPAEDER, LLP      BY: ALEXANDRA W. MILLER, ESQ.      14 1800 M. Street NW, Suite 1000      Washington, D.C. 20036      15 (202) 778-1845      smiller@zuckerman.com      16 Representing the Defendant, CVS, and the      Witness      17      18 WILLIAMS &amp; CONNOLLY, LLP      BY: KATELYN ADAMS, ESQ.      19 725 12th Street, NW      Washington, D.C. 20005      20 (202) 434-5148      kadams@wc.com      21 Representing the Defendant, Cardinal      Health      22      23      24</p>	<p style="text-align: right;">Page 4</p> <p>1 ALSO PRESENT:      2 Stephanie Heckman, Paralegal      (Baker &amp; Baker, PLLC)      3      4 Justin L. Mann, Esq. (Law Clerk)      (Ropes Gray - via telephone)      5      6 Amy Kennedy, Paralegal      (Weisman Kennedy - via telephone))      7      8      9 VIDEOTAPE TECHNICIAN:      Dan Lawlor      10      11 LITIGATION TECHNICIAN:      James Beall      12      13      14      15      16      17      18      19      20      21      22      23      24</p>																																				
<p style="text-align: right;">Page 3</p> <p>1 TELEPHONIC APPEARANCES:      2      3 MOTLEY RICE, LLC      BY: MICHAEL ELSNER, ESQ.      4 28 Bridgeside Boulevard      Mount Pleasant, South Carolina 29464      (843) 216-9373      5 melsner@motleyrice.com      Representing the Plaintiffs      6      7 JONES DAY      BY: CHRISTINE D. PROROK, ESQ.      8 77 West Wacker Drive      Chicago, Illinois 60601      9 (312) 269-4113      Cprorok@jonesday.com      10 Representing the Defendant, Walmart      11      12 ARNOLD &amp; PORTER KAYE SCHOLER, LLP      BY: ZENO HOUSTON, ESQ.      13 250 West 55th Street      New York, New York 10019      (212) 836-7332      14 Zeno.houston@arnoldporter.com      Representing the Defendants, Endo Health      Solutions, Endo Pharmaceuticals, Inc.;      Par Pharmaceutical Companies, Inc. f/k/a      Par Pharmaceutical Holdings, Inc.      15      16 JACKSON KELLY, PLLC      BY: JONATHAN L. ANDERSON, ESQ.      17 500 Lee Street East      Suite 1600      Charleston West Virginia 25301      (304) 340-1169      18 JlAnderson@jacksonkelly.com      Representing the Defendant,      AmerisourceBergen      19      20      21      22      23      24</p>	<p style="text-align: right;">Page 5</p> <p>1      2      3      4      5      6      7      8      9      10      11      12      13      14      15      16      17      18      19      20      21      22      23      24</p> <p style="text-align: center;">I N D E X      - - -</p> <p>Testimony of:</p> <p style="text-align: center;">FRANK DEVLIN</p> <p style="text-align: right;">By Mr. Baker 14      By Mr. DeRoche 384</p> <p style="text-align: center;">- - -</p> <p style="text-align: center;">E X H I B I T S</p> <p style="text-align: center;">- - -</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left; width: 10%;">NO.</th> <th style="text-align: left; width: 60%;">DESCRIPTION</th> <th style="text-align: right; width: 30%;">PAGE</th> </tr> </thead> <tbody> <tr> <td>CVS</td> <td></td> <td></td> </tr> <tr> <td>Devlin-P-18</td> <td>E-mail Thread 1/3/08</td> <td style="text-align: right;">89</td> </tr> <tr> <td></td> <td>Subject, New Rx</td> <td></td> </tr> <tr> <td></td> <td>DEA SOP</td> <td></td> </tr> <tr> <td></td> <td>CVS-MDLT1-000025204-59</td> <td></td> </tr> <tr> <td>CVS</td> <td></td> <td></td> </tr> <tr> <td>Devlin-P-48</td> <td>Controlled Drug</td> <td style="text-align: right;">96</td> </tr> <tr> <td></td> <td>DEA Standard</td> <td></td> </tr> <tr> <td></td> <td>Operating Procedures</td> <td></td> </tr> <tr> <td></td> <td>Manual</td> <td></td> </tr> <tr> <td></td> <td>CVS-MDLT1-000024877-41</td> <td></td> </tr> </tbody> </table>	NO.	DESCRIPTION	PAGE	CVS			Devlin-P-18	E-mail Thread 1/3/08	89		Subject, New Rx			DEA SOP			CVS-MDLT1-000025204-59		CVS			Devlin-P-48	Controlled Drug	96		DEA Standard			Operating Procedures			Manual			CVS-MDLT1-000024877-41	
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1			1	THE VIDEOGRAPHER: We are
2		E X H I B I T S (Cont'd.)	2	now on the record.
3			3	My name is Dan Lawlor, I'm a
4			4	videographer with Golkow
5	NO.	DESCRIPTION	PAGE	5 Litigation Services.
6	CVS	Devlin-P-200 Item Review	469	6 Today's date is January 10,
7		Reports		7 2019, and the time is 8:33 a.m.
8		CVS-MDLT1-00001195-04		8 This video deposition is
9	CVS	Devlin-P-201 Item Review	426	9 being held in Washington, DC, in
10		Reports		10 the matter of National
11		CVS-MDLT1-000100763-74		11 Prescription Opiate litigation,
12	CVS	Devlin-P-209 E-mail, 1/6/10	315	12 MDL Number 2804.
13		Subject, Control Drug		13 The deponent is Frank
14		IRR Issue Recap		14 Devlin.
15	CVS	CVS-MDLT1-000110260		15 Counsel will be noted on the
16		Devlin-P-211 E-mail Thread	270	16 stenographic record.
17		2/24/10 Subject, Adjustment		17 The court reporter is
18		To the CVS SOM		18 Michelle Gray and will now swear
19		CVS-MDLT1-000110434-36		19 in the witness.
20				20 - - -
21				21 ... FRANK DEVLIN,
22				22 having been first duly sworn, was
23				23 examined and testified as follows:
24				24 - - -

1           EXAMINATION 2           - - - 3 BY MR. BAKER: 4       Q. Please state your name. 5       A. Frank Devlin. 6       Q. Mr. Devlin, where do you 7 live? 8       A. I live in Pocasset, 9 Massachusetts. 10      Q. What is your employment 11 right now? 12      A. Excuse me? 13      Q. Where are you employed right 14 now? 15      A. I own my own consulting 16 company. 17      Q. What's the name of the 18 company? 19      A. Seashore Risk Management. 20      Q. And what is the nature of 21 that business? 22      A. It's a consulting firm 23 focusing on safety, OSHA compliance, 24 auditing, forklift training.	Page 14  1 employment opportunity? 2       A. Amazon. 3       Q. Is that where Mr. Burtner 4 also went to work, Aaron Burtner? 5       A. Yes. 6       Q. Okay. Did -- did you help 7 Mr. Burtner get employed at Amazon? 8       MS. MILLER: Object to form. 9 BY MR. BAKER: 10      Q. Did you? 11      MS. MILLER: Object. 12 BY MR. BAKER: 13      Q. Go ahead. 14       Let me explain. When the 15 attorney objects, she objects to form. 16 That doesn't mean you can't answer the 17 question. It's just a technicality in 18 the rules of procedure where she says 19 object to form, so she preserves the 20 right to go to the judge and have the 21 question looked at by the judge to 22 determine if it's a properly phrased 23 question. And -- but it doesn't mean you 24 don't answer the question.
Page 15  1       Q. Are your customers corporate 2 customers? 3       A. Yes. 4       Q. Is CVS one of your 5 customers? 6       A. No. 7       Q. Have you courted CVS to be 8 one of your customers? 9       MS. MILLER: Object to form. 10      BY MR. BAKER: 11      Q. Have you tried to get CVS to 12 become one of your customers? 13      MS. MILLER: Objection. 14      BY MR. BAKER: 15      Q. Go ahead. 16      A. No. 17      Q. Have you made any contact 18 with CVS since leaving CVS in 2012? 19      A. No. 20      Q. What was the reason you left 21 CVS in 2012? 22      A. A better employment 23 opportunity. 24      Q. What was the better	Page 17  1       So if she instructs you not 2 to answer, that would be the only time 3 you wouldn't answer the question. Fair 4 enough? 5       MS. MILLER: And just, 6 Frank, that's correct. I'm noting 7 my objections on the record. You 8 may respond to the question unless 9 I instruct you not to answer. 10      THE WITNESS: Okay. 11      Can you repeat the question? 12      BY MR. BAKER: 13      Q. Yeah, many times during this 14 deposition counsel seated to your left 15 will say object to form. That's her 16 right to do that. That doesn't mean that 17 you don't answer the question. It's just 18 noted on the record that she objected to 19 the question. It doesn't necessarily 20 mean something's wrong with the question. 21 It's just she's preserving her right to 22 object at a later time. 23      A. I understood. 24      Q. Is that clear?

<p style="text-align: right;">Page 18</p> <p>1        All right. So what, if any, 2 contact did you have with Mr. Burtner 3 before he came to work for Amazon, after 4 you left -- 5        A. Yes. 6        Q. -- CVS, you went to Amazon, 7 right? 8        A. That is correct. 9        Q. In 2012. 10      A. That is correct. 11      Q. Okay. What contact did you 12 have with Mr. Burtner after you left CVS 13 to go to Amazon? 14      A. I reached out to Mr. Burtner 15 for possible employment opportunity with 16 Amazon. 17      Q. When did you do -- okay. 18 When did you do that? 19      MS. MILLER: Bill, would you 20 just give him a chance to answer? 21      MR. BAKER: Sure. 22 BY MR. BAKER: 23      Q. And I didn't mean to 24 overstep your answer, but you're --</p>	<p style="text-align: right;">Page 20</p> <p>1        Q. Do you know whether or not 2 he expressed anything to you about being 3 unhappy at CVS with his employment? 4        MS. MILLER: Objection. 5        THE WITNESS: No. 6        MS. MILLER: Frank, just 7 give me a little time, stepping on 8 my objections. Go ahead. 9 BY MR. BAKER: 10      Q. Did Mr. Burtner express to 11 you any problems going on within the 12 morale of employees at CVS while he was 13 there? 14      MS. MILLER: Object to form. 15 BY MR. BAKER: 16      Q. Did he express that to you 17 at all? 18      MS. MILLER: Object to form. 19      THE WITNESS: No, not that I 20 can recall. 21 BY MR. BAKER: 22      Q. How long did you work at 23 Amazon while Mr. Burtner was also at 24 Amazon?</p>
<p style="text-align: right;">Page 19</p> <p>1        you're kind of soft-spoken so I can't 2 tell when you're finished your answer. 3        THE WITNESS: Okay. 4        MS. MILLER: And, Frank, 5 give him time to complete his 6 question, please. 7 BY MR. BAKER: 8        Q. Are you ready for the 9 question? 10      A. Can you repeat your 11 question? 12      Q. Okay. The question is, when 13 did you reach out to Mr. Burtner for the 14 prospect of employment with Amazon when 15 you were at Amazon? 16      A. It probably would have been 17 sometime in 2013. I can't recall the 18 exact date. 19      Q. All right. And what was the 20 reason that you reached out to him? 21      MS. MILLER: Object to form. 22      THE WITNESS: I knew him and 23 I knew his capabilities. 24 BY MR. BAKER:</p>	<p style="text-align: right;">Page 21</p> <p>1        A. My employment at Amazon was 2 from beginning of November 2012 through 3 March of 2014. 4        Q. I'm going to go through a 5 list of acronyms which are abbreviations 6 for words. And I want to make sure 7 before we go into your deposition today 8 that when we use these acronyms, we're -- 9 we're on the same page with respect to 10 these acronyms. 11      Okay? Are you with me? Do 12 you understand? 13      A. I do. 14      Q. Okay. All right. The first 15 acronym is SOM, can you tell us what SOM 16 stands for? 17      A. I believe that's suspicious 18 order monitoring. 19      Q. The next acronym is SOP, can 20 you tell us what SOP stands for? 21      MS. MILLER: Object to form. 22      THE WITNESS: I believe that 23 would be standard operating 24 procedure.</p>

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<p>1 BY MR. BAKER:</p> <p>2 Q. I'm asking you these</p> <p>3 questions in reference to how they were</p> <p>4 used at CVS. So that's the context of</p> <p>5 the question. So at CVS, SOP was</p> <p>6 standard operating procedure, correct?</p> <p>7 MS. MILLER: Objection.</p> <p>8 THE WITNESS: I believe so.</p> <p>9 I can't say 100 percent. There</p> <p>10 are a lot of -- a lot of</p> <p>11 abbreviations, whether it was at</p> <p>12 CVS or Amazon. So sometimes they</p> <p>13 tend to blend together.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. When we're talking about an</p> <p>16 SOM SOP, would that be a suspicious order</p> <p>17 monitoring standard of procedure at CVS</p> <p>18 when you were there?</p> <p>19 MS. MILLER: Objection.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Sir? What's the answer?</p> <p>23 MS. MILLER: Go ahead.</p> <p>24 THE WITNESS: No.</p>	<p>1 with that?</p> <p>2 A. I've heard the terminology.</p> <p>3 Q. DEA. Who is the DEA that</p> <p>4 you know to exist in the context of your</p> <p>5 employment when you worked there at CVS?</p> <p>6 A. That would be the Drug</p> <p>7 Enforcement Agency.</p> <p>8 Q. FDA, who would that be in</p> <p>9 the context of your employment at CVS</p> <p>10 when you worked in the suspicious order</p> <p>11 monitoring department?</p> <p>12 MS. MILLER: Objection.</p> <p>13 MR. BAKER: She objected.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. What does FDA mean to you?</p> <p>16 Food and Drug Administration. Do you</p> <p>17 understand that?</p> <p>18 A. I've heard that term used,</p> <p>19 yes.</p> <p>20 Q. Okay. CVS, what does that</p> <p>21 stand for?</p> <p>22 MS. MILLER: Objection.</p> <p>23 THE WITNESS: I've heard it</p> <p>24 stand for a couple different</p>
Page 23	Page 25
<p>1 BY MR. BAKER:</p> <p>2 Q. What would an SOM SOP be?</p> <p>3 MS. MILLER: Objection.</p> <p>4 THE WITNESS: I believe it</p> <p>5 would be suspicious order</p> <p>6 monitoring standard operating</p> <p>7 procedure.</p> <p>8 BY MR. BAKER:</p> <p>9 Q. Okay. When you're talking</p> <p>10 about a P&amp;P, is that policy and</p> <p>11 procedure?</p> <p>12 MS. MILLER: Objection.</p> <p>13 THE WITNESS: Can you repeat</p> <p>14 that?</p> <p>15 BY MR. BAKER:</p> <p>16 Q. P&amp;P, is that policy and</p> <p>17 procedure?</p> <p>18 MS. MILLER: Objection.</p> <p>19 THE WITNESS: I'd have to</p> <p>20 see the context in how it's being</p> <p>21 used.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Okay. DOJ, that's the</p> <p>24 Department of Justice. Are you familiar</p>	<p>1 terms.</p> <p>2 BY MR. BAKER:</p> <p>3 Q. Tell me.</p> <p>4 A. For Consumer Value Stores.</p> <p>5 Q. Anything else?</p> <p>6 A. Also Convenience Value, and</p> <p>7 I forget what the other S was.</p> <p>8 Q. C.F.R., Code of Federal</p> <p>9 Regulation, are you familiar with that?</p> <p>10 A. Which one?</p> <p>11 Q. Are you familiar with the</p> <p>12 concept of Code of Federal Regulation?</p> <p>13 Are you familiar with that term?</p> <p>14 A. I've heard the term</p> <p>15 "C.F.R.," yes.</p> <p>16 Q. CSA, Controlled Substances</p> <p>17 Act, have you ever heard of that?</p> <p>18 MS. MILLER: Objection.</p> <p>19 THE WITNESS: I believe I</p> <p>20 may have heard that, yes.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Okay. When you worked at</p> <p>23 CVS, that was from May of 25 -- May of</p> <p>24 2005 to October of 2012; is that right?</p>

1 A. No. 2 Q. When did you work there? 3 A. February 11th, 1991, through 4 the end of October 2012. 5 Q. Do you have a LinkedIn page? 6 A. Yes. 7 Q. Let me show you what's been 8 marked as Plaintiff's Exhibit Number 130. 9 (Document marked for 10 identification as Exhibit 11 CVS-Devlin-P-130.)  12 BY MR. BAKER: 13 Q. Is this your LinkedIn page 14 that you're looking at? 15 A. I need to get my glasses. 16 Q. Is that it? 17 A. I need to look through it 18 first. Appears to be, yes. 19 Q. Okay. On your LinkedIn 20 page, the second-to-last page, it has CVS 21 Health. 22 MR. BAKER: Page forward, 23 please. 24 BY MR. BAKER:	Page 26  1 would have been promoted to another level 2 in a director position. 3 Q. What position were you 4 promoted to in May of 2005 at CVS Health? 5 A. CVS had various levels of 6 director positions. 7 Q. What was the position? 8 A. It was a similar position to 9 what I was already doing. 10 Q. What was the name of the 11 position? 12 A. Director of logistics, loss 13 prevention. 14 Q. Okay. So at that point you 15 continued to work as director of 16 logistics, loss prevention from May 2005 17 to October 2012; is that right? 18 A. Can you repeat that? 19 Q. Did you work as director of 20 logistics, loss prevention from May 2005 21 to October 2012 at CVS Health? 22 A. Yes. 23 Q. Okay. During that time, was 24 CVS known as CVS Health or CVS Caremark?
Page 27  1 Q. At the top, it says here 2 that you were employed at CVS Health from 3 May 2005 to October 2012, seven years and 4 six months. Did you enter that data in 5 your page? 6 A. Yes. 7 Q. Okay. What was the reason 8 that you chose that time frame to tell 9 everybody that you were employed at CVS 10 Health as opposed to 1991 forward? 11 MS. MILLER: Objection. 12 THE WITNESS: Just from an 13 age standpoint. 14 BY MR. BAKER: 15 Q. What do you mean an age 16 standpoint? 17 A. Just there's no requirement 18 on LinkedIn as far as putting down exact 19 employment dates. 20 Q. What happened in May of 2005 21 with respect to your employment that 22 causes you to choose that date? 23 A. I believe at that point, and 24 not 100 percent sure that I probably	Page 29  1 MS. MILLER: Objection. 2 THE WITNESS: They were 3 probably -- they've had so many 4 different names. It could have 5 been CVS Caremark. 6 BY MR. BAKER: 7 Q. Okay. 8 (Document marked for 9 identification as Exhibit 10 CVS-Devlin-P-131.) 11 BY MR. BAKER: 12 Q. Let me show you Exhibit 131. 13 I'm trying to get an accurate history of 14 the names of the corporations within CVS 15 Health. And I'd like to spend some time 16 doing that with you. 17 If you could turn -- this 18 comes from CVS Health's website. And if 19 you turn to the area of 2001 through 20 2006. Go about eight pages in. 21 A. What was the date again? 22 Q. 2001 at the top of the page. 23 Do you see it? Are you there? 24 A. "CVS introduces ExtraCare

<p>1 card"?</p> <p>2 Q. Correct. Okay. Go down to</p> <p>3 2003. It says, "CVS Caremark Rx and</p> <p>4 AdvancePCS announce strategic</p> <p>5 combination, creating a \$23 billion</p> <p>6 company." Were you with them at the</p> <p>7 time?</p> <p>8 MS. MILLER: Objection.</p> <p>9 BY MR. BAKER:</p> <p>10 Q. Were you with CVS Caremark</p> <p>11 at the time?</p> <p>12 MS. MILLER: Objection.</p> <p>13 THE WITNESS: I was employed</p> <p>14 at CVS from February 11, 1991</p> <p>15 through the end of October 2012.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. Okay. So 2003 you would</p> <p>18 have been employed by CVS Caremark?</p> <p>19 MS. MILLER: Objection.</p> <p>20 BY MR. BAKER:</p> <p>21 Q. Yes?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. All right. Then it</p> <p>24 talks about in 2007, it says, "CVS" -- go</p>	<p>Page 30</p> <p>1 kind of hung up as far as whether it's</p> <p>2 CVS Pharmacy, CVS Distribution, CVS</p> <p>3 Logistics, CVS Health, CVS Caremark.</p> <p>4 It's CVS.</p> <p>5 Q. Okay. Do you know when the</p> <p>6 corporation became known as CVS Health?</p> <p>7 MS. MILLER: Objection.</p> <p>8 THE WITNESS: No.</p> <p>9 BY MR. BAKER:</p> <p>10 Q. Okay. Go to 2014, under the</p> <p>11 history of the company.</p> <p>12 MS. MILLER: Mr. Baker, just</p> <p>13 a question about the document.</p> <p>14 Where was this obtained</p> <p>15 from?</p> <p>16 MR. BAKER: From the</p> <p>17 website, CVS.com. It says it</p> <p>18 right there at the top.</p> <p>19 BY MR. BAKER:</p> <p>20 Q. You see on the page under</p> <p>21 2014, do you see that? You're there.</p> <p>22 2014. Go to the next page.</p> <p>23 A. It's cut off.</p> <p>24 Q. Go to the next page. Go</p>
<p>1 to the next page. It says, "CVS</p> <p>2 Corporation and Caremark Rx, Inc.,</p> <p>3 complete their transformative merger,</p> <p>4 creating CVS Caremark, the nation's</p> <p>5 premier integrated pharmacy services</p> <p>6 provider."</p> <p>7 Is that, to your knowledge,</p> <p>8 when CVS became known as CVS Caremark?</p> <p>9 MS. MILLER: Objection.</p> <p>10 BY MR. BAKER:</p> <p>11 Q. Or not?</p> <p>12 MS. MILLER: Objection.</p> <p>13 THE WITNESS: That's what</p> <p>14 this document says. I wouldn't</p> <p>15 know that.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. Who was your employer in</p> <p>18 2007 at CVS, which CVS entity?</p> <p>19 MS. MILLER: Objection.</p> <p>20 THE WITNESS: I just refer</p> <p>21 to CVS as CVS.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Okay.</p> <p>24 A. I didn't get -- I didn't get</p>	<p>Page 31</p> <p>1 about a third of the way down the page.</p> <p>2 It says, "CVS Caremark announces that its</p> <p>3 corporate name has changed to CVS Health</p> <p>4 to further reflect its broader commitment</p> <p>5 to healthcare."</p> <p>6 Do you see that?</p> <p>7 A. I do.</p> <p>8 Q. Okay. Is that, to your</p> <p>9 knowledge, when CVS Caremark became known</p> <p>10 as CVS Health?</p> <p>11 MS. MILLER: Objection.</p> <p>12 THE WITNESS: I really</p> <p>13 didn't pay attention to it.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. Okay. Well, you list CVS</p> <p>16 Health as your employer. That's why I'm</p> <p>17 wondering why you chose that name. Is</p> <p>18 that the last name that the company was</p> <p>19 known as at the time that you left, or</p> <p>20 did it become known as CVS Health after</p> <p>21 you left?</p> <p>22 MS. MILLER: Objection.</p> <p>23 THE WITNESS: The LinkedIn</p> <p>24 page, it's not -- the LinkedIn</p>

	Page 34		Page 36
1	page isn't, as far as I know it is	1	2006, where was your physical location?
2	not a legal document. And in	2	A. It still may have been in
3	putting my history down, it's --	3	the distribution center. But I --
4	you try to keep current. So it's	4	Q. Okay. How long did that
5	not a reflection of -- I didn't	5	continue?
6	get into -- again, I didn't get	6	A. Probably, I don't know, it
7	into whether it's CVS, CVS	7	was 2007, 2008 I moved to the corporate
8	pharmacy, CVS Health.	8	office which was just up the street.
9	When you update your	9	Q. Okay. So -- and from 2008
10	LinkedIn page, that comes up, it's	10	all the way through the time that you
11	now referred to as CVS Health.	11	left in 2012, were you in the corporate
12	BY MR. BAKER:	12	12 office in Woonsocket, Rhode Island?
13	Q. Okay. Let me explain. I'm	13	A. Yes. Various -- various
14	not criticizing you for putting CVS	14	locations. I was 1 CVS Drive. I was
15	Health on there. I just want know the	15	also at the --
16	name of the company that paid you while	16	Q. Let me show you what's
17	you worked there. That's all I'm getting	17	marked as Exhibit 130 --
18	at. Okay.	18	A. I didn't finish.
19	So when you left in 2012,	19	Q. Yeah, go ahead. I'm just
20	was the company known as CVS Health or	20	trying to move through this, because we
21	CVS Caremark, or do you know?	21	only have a certain amount of time to do
22	MS. MILLER: Objection --	22	this.
23	objection. Asked and answered.	23	A. Okay.
24	BY MR. BAKER:	24	Q. I appreciate the fact that
	Page 35		Page 37
1	Q. Do you know?	1	1 you're trying to be precise in your
2	A. I believe I already answered	2	2 answers, but if you drag it on beyond
3	that.	3	3 what's necessary to answer the question,
4	Q. Okay. See, here is what I'm	4	4 it just makes us have to stay here that
5	asking you. Do you know whether or not	5	5 much longer. And I'd really like to move
6	the company name was CVS Caremark or CVS	6	6 through this for your benefit, to catch
7	Health when you left, do you know?	7	7 your airplane this afternoon and for
8	That's all I'm asking.	8	8 everybody's benefit. Okay? I'm not
9	MS. MILLER: Objection.	9	9 trying to be ugly to you. I just want to
10	Asked and answered.	10	10 move through this. Okay?
11	THE WITNESS: No.	11	A. All right.
12	BY MR. BAKER:	12	Q. So if we could do that, I'd
13	Q. Okay. You don't know.	13	13 appreciate you doing that in the context
14	Okay.	14	14 of your answer.
15	So when you worked there as	15	A. Sure.
16	director of logistics loss prevention,	16	Q. I know you're nervous. It's
17	how many -- or excuse me. Where	17	17 obvious from looking at you, but I'm not
18	physically were you located when you were	18	18 trying to do anything other than ask you
19	working as the director of logistics loss	19	19 straight questions and get straight
20	prevention in 2005?	20	20 answers. Is that fair?
21	A. 2005. My office may have	21	A. Okay. I just want to make
22	been in the Woonsocket distribution	22	sure I understand the question.
23	center.	23	Q. Sure. If you -- if you
24	Q. Where were you employed in	24	think I'm being unfair with you, tell me.

<p style="text-align: right;">Page 38</p> <p>1 Okay? But I'm trying to be very fair      2 with you in how I treat you --      3 A. No, I understand --      4 Q. -- and I want to be very      5 fair with you in terms of letting you      6 look at the documentation that I'm      7 looking at so you understand where I'm      8 coming from. I'm just trying to get the      9 facts. Is that -- is that clear?</p> <p>10 A. Yes, sir.      11 Q. Okay.      12 MS. MILLER: And, Bill, just      13 give him a chance to answer the      14 question.      15 MR. BAKER: Sure. Sure.      16 (Document marked for      17 identification as Exhibit      18 CVS-Devlin-P-132.)</p> <p>19 BY MR. BAKER:      20 Q. This is marked as      21 Exhibit 132. This is --      22 A. If I just can go back, I      23 wanted to just discuss where my office      24 was located.</p>	<p style="text-align: right;">Page 40</p> <p>1 Health across the United States?      2 MS. MILLER: Objection.      3 THE WITNESS: I'm sorry, can      4 you rephrase the question?      5 BY MR. BAKER:      6 Q. When you last worked at CVS      7 in October of 2012, that's when you last      8 worked there, right?      9 A. Yes, sir.      10 Q. Okay. How many distribution      11 centers were there for CVS? And I'm      12 going to say CVS because there's so many      13 different CVS entities.      14 A. Right.      15 Q. So when I say CVS, you know      16 who I'm talking about, correct?      17 A. Yes, sir.      18 Q. Okay. I'm talking about      19 your employer in 2012.      20 So how many distribution      21 centers were there at that time?      22 A. I'd say, off the top of my      23 head, maybe about 20.      24 Q. Okay. And out of that 20,</p>
<p style="text-align: right;">Page 39</p> <p>1 Q. Sure. Go ahead.      2 A. I was 1 CVS Drive, and then      3 towards the end of my tenure we moved to      4 an office in Highland Drive which was in      5 Cumberland, Rhode Island. But it was      6 part of the same office complex.      7 Q. Okay. But during the period      8 of time that you were employed at CVS      9 from 2005 to 2012 when you were in the      10 logistics loss prevention department as      11 the director, you were physically located      12 in Rhode Island, correct?      13 A. Yes. That's -- that's where      14 my mail would come to, but I -- yes.      15 Q. Okay. And that's where your      16 physical office was located; is that      17 right?      18 A. Yes, sir.      19 Q. All right. I've handed you      20 Exhibit 132. This is a distribution      21 center printout for CVS Health. Can you      22 tell me when you worked there, when you      23 last left in 2012, approximately how many      24 distribution centers were there for CVS</p>	<p style="text-align: right;">Page 41</p> <p>1 how many were licensed for distributing      2 narcotics?      3 MS. MILLER: Objection.      4 THE WITNESS: If you give me      5 a moment I can try to recall.      6 Maybe about eight.      7 BY MR. BAKER:      8 Q. Okay. Let's go through this      9 list. We'll make sure I get all of them.      10 Okay?      11 Look on this list, and      12 you'll see -- you can see where it's      13 yellowed in on your screen. Do you see      14 it on the screen?      15 A. Yeah --      16 Q. Okay.      17 A. That's difficult for me to      18 read.      19 Q. Okay. We'll put --      20 MS. MILLER: Mr. Baker, just      21 one moment.      22 MR. BAKER: Sure.      23 MS. MILLER: Can you tell us      24 the -- I notice there's no Bates</p>

<p style="text-align: right;">Page 42</p> <p>1 number on the document.      2 MR. BAKER: This is an --      3 MS. MILLER: Can you tell us      4 where this originated from?      5 MR. BAKER: This is an      6 internet document from CVS.com.      7 And this is where I got it. And I      8 want to make sure that he is able      9 to look at the yellowed-in version      10 on the screen.</p> <p>11 You can pull the screen to      12 you.</p> <p>13 MS. MILLER: But, Mr. --      14 Mr. Baker, this is as of June --      15 MR. BAKER: 2014.</p> <p>16 MS. MILLER: Well, it says      17 June, it's dated June 14, 2018.</p> <p>18 MR. BAKER: Yeah, I'm going      19 to ask him which ones were in      20 existence when he was there.</p> <p>21 MS. MILLER: Okay.      22 MR. BAKER: Okay?      23 THE WITNESS: I have      24 distance glasses that I brought</p>	<p style="text-align: right;">Page 44</p> <p>1 MR. BAKER: Correct.      2 MS. MILLER: -- in 2012?      3 MR. BAKER: Correct. We're      4 going to go through that.</p> <p>5 BY MR. BAKER:</p> <p>6 Q. All right. The first -- you      7 see where it says type Rx? That's the      8 type of distribution center. Do you see      9 that, that would be Rx licensed?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. All right. The first      12 one is CR, which is Conroe, Texas; is      13 that correct?</p> <p>14 A. That was -- that was there,      15 yes.</p> <p>16 Q. All right. Was that on      17 board in 2012?</p> <p>18 A. I believe so, yes.</p> <p>19 Q. All right. The second one      20 is Ennis, Texas. Do you see that?</p> <p>21 A. Yes, correct?</p> <p>22 Q. Was that on board as a      23 narcotics distribution center in 2012?</p> <p>24 A. Yes.</p>
<p style="text-align: right;">Page 43</p> <p>1 with me.      2 BY MR. BAKER:      3 Q. Okay. Go ahead. All right.      4 Let's go through it if we could.      5 A. Can --      6 Q. Sure.      7 A. Do you want me to go get my      8 distance glasses?      9 Q. No. Just whatever you --      10 you can pull the screen right --      11 MS. MILLER: Or the document      12 in front of you is the same      13 document on the screen.      14 THE WITNESS: Okay. Just      15 it's difficult for me to see the      16 yellow highlight.      17 BY MR. BAKER:      18 Q. Are you ready?      19 A. If I can pull the screen      20 closer.      21 Q. Yes.      22 MS. MILLER: And again,      23 Bill, your question is as of when      24 he left --</p>	<p style="text-align: right;">Page 45</p> <p>1 MS. MILLER: Objection.      2 BY MR. BAKER:      3 Q. What does Rx mean to you?      4 MS. MILLER: Objection.      5 THE WITNESS: Pharmacy.      6 BY MR. BAKER:      7 Q. Okay. All right. So what      8 do you call the type of licensing that      9 these distribution centers have when they      10 are able to distribute narcotics, what do      11 you call that?      12 MS. MILLER: Objection.      13 THE WITNESS: I would call      14 it a DEA registered facility.      15 BY MR. BAKER:      16 Q. Okay. A DEA registered      17 facility is one that distributes -- that      18 has a license to distribute some form of      19 narcotics; is that right?      20 MS. MILLER: Objection.      21 THE WITNESS: It would be      22 Controls III through V, I believe.      23 BY MR. BAKER:      24 Q. Okay. Controlled Substances</p>

<p style="text-align: right;">Page 46</p> <p>1 III through V, correct?</p> <p>2 A. Right.</p> <p>3 Q. All right. And you know</p> <p>4 that certain controlled substances under</p> <p>5 III were narcotics, meaning hydrocodone</p> <p>6 combination products, correct?</p> <p>7 MS. MILLER: Objection.</p> <p>8 BY MR. BAKER:</p> <p>9 Q. You knew that?</p> <p>10 MS. MILLER: Objection.</p> <p>11 BY MR. BAKER:</p> <p>12 Q. Right?</p> <p>13 MS. MILLER: Objection.</p> <p>14 THE WITNESS: Can you repeat</p> <p>15 the question?</p> <p>16 BY MR. BAKER:</p> <p>17 Q. Did you know that</p> <p>18 hydrocodone combination products were</p> <p>19 Schedule III under the FDA?</p> <p>20 MS. MILLER: Objection.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Did you know that?</p> <p>23 MS. MILLER: Objection.</p> <p>24 BY MR. BAKER:</p>	<p style="text-align: right;">Page 48</p> <p>1 next one, Indianapolis, Indiana, was that</p> <p>2 one of the facilities, one of the</p> <p>3 distribution centers for CVS that</p> <p>4 distributed controlled substances?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Kansas City, was that</p> <p>7 on board when you were there or did that</p> <p>8 open after you left?</p> <p>9 A. I'm not aware of Kansas</p> <p>10 City.</p> <p>11 Q. Okay. Move to the next</p> <p>12 page. New Jersey, which was Lumberton,</p> <p>13 New Jersey. Was that a controlled</p> <p>14 substances distribution center for CVS</p> <p>15 when you were there, in Lumberton, New</p> <p>16 Jersey?</p> <p>17 A. Yes.</p> <p>18 Q. Orlando, Florida, was that a</p> <p>19 controlled substances distribution center</p> <p>20 when you were at CVS?</p> <p>21 A. Yes.</p> <p>22 Q. Knoxville, Tennessee, was</p> <p>23 that a controlled substance distribution</p> <p>24 center when you were at CVS?</p>
<p style="text-align: right;">Page 47</p> <p>1 Q. Controlled substances. If</p> <p>2 they were Schedule III controlled</p> <p>3 substances under the FDA scheduling, did</p> <p>4 you know that?</p> <p>5 MS. MILLER: Objection.</p> <p>6 BY MR. BAKER:</p> <p>7 Q. When you were there in 2012?</p> <p>8 MS. MILLER: Objection.</p> <p>9 THE WITNESS: At one point.</p> <p>10 BY MR. BAKER:</p> <p>11 Q. Okay. I know. Did you know</p> <p>12 that, is what I'm asking?</p> <p>13 MS. MILLER: Objection.</p> <p>14 THE WITNESS: Yes.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. Okay. So let's move forward</p> <p>17 in this list. You have Florida, Vero</p> <p>18 Beach, Florida. Was that one of the</p> <p>19 facilities that distributed narcotics?</p> <p>20 MS. MILLER: Objection.</p> <p>21 THE WITNESS: I would use</p> <p>22 the term "controls."</p> <p>23 BY MR. BAKER:</p> <p>24 Q. Okay. With respect to the</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Yes.</p> <p>2 Q. Patterson, California, was</p> <p>3 that a controlled substance distribution</p> <p>4 center when you were at CVS?</p> <p>5 A. Yes.</p> <p>6 Q. North Smithfield, Rhode</p> <p>7 Island, was that a controlled substance</p> <p>8 distribution center when you were at CVS?</p> <p>9 MS. MILLER: Mr. Baker, I'm</p> <p>10 sorry, can you tell me where you</p> <p>11 are in the document?</p> <p>12 MR. BAKER: About at the</p> <p>13 bottom of Page 2.</p> <p>14 MS. MILLER: Okay. Thank</p> <p>15 you.</p> <p>16 MR. BAKER: Okay.</p> <p>17 THE WITNESS: Can you repeat</p> <p>18 that?</p> <p>19 BY MR. BAKER:</p> <p>20 Q. Patterson, California, was</p> <p>21 that a controlled substances distribution</p> <p>22 center when you were at CVS?</p> <p>23 A. Yeah, I believe so, yes.</p> <p>24 Q. Okay. North Smithfield,</p>

<p style="text-align: right;">Page 50</p> <p>1 Rhode Island, was that a controlled      2 substances distribution center when you      3 were there at CVS?      4 A. Yes.      5 Q. Chemung, New York, was that      6 a controlled substance distribution      7 center for CVS when you were there?      8 A. Yes.      9 Q. Are you familiar with the      10 scheduling of controlled substances      11 through the Food and Drug Administration?      12 MS. MILLER: Objection.      13 THE WITNESS: I'm aware of      14 the scheduling. I'm not -- I      15 really can't recall as far as what      16 might be a V, what might be a IV,      17 what might be a III, what might be      18 a II.</p> <p>19 BY MR. BAKER:</p> <p>20 Q. Do you know, if you look      21 through that list that I just gave you of      22 the distribution centers, there's      23 different names of corporations that are      24 listed as the owners of those</p>	<p style="text-align: right;">Page 52</p> <p>1 BY MR. BAKER:      2 Q. Okay. Look down below      3 there. It says Indiana, CVS Indiana LLC.      4 Do you see that?      5 A. Yes.      6 Q. Do you know why that's named      7 CVS Indiana LLC as opposed to, for      8 instance, CVS Pharmacy, Inc., or CVS      9 Healthcare or CVS something else? Do you      10 know why it's named that?      11 MS. MILLER: Objection.      12 THE WITNESS: No.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Was there any strategy that      15 you're aware of at CVS for naming these      16 facilities different corporate names like      17 that?</p> <p>18 MS. MILLER: Objection.      19 THE WITNESS: It wasn't my      20 responsibility.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Okay. If you look at the      23 Lumberton, New Jersey one on the second      24 page. It lists that as owned by CVS</p>
<p>1 distribution centers.      2 Do you see that on that      3 list?      4 MS. MILLER: Objection.      5 BY MR. BAKER:      6 Q. Let's go through first,      7 okay. If you start with Conroe, Texas.      8 Do you see that?      9 A. I do see that.      10 Q. Okay. Do you see it says      11 the DC name is CVS Pharmacy, Inc.? Do      12 you see that?      13 A. I do.      14 Q. Now, if you skip down to      15 Florida, the Vero Beach distribution      16 center, it says "CVS Vero, Florida      17 Distribution LLC."      18 Do you see that?      19 A. Yes, sir.      20 Q. Do you know why CVS names      21 these different facilities different      22 names instead of the same thing?      23 A. No idea.      24 MS. MILLER: Objection.</p>	<p style="text-align: right;">Page 51</p> <p>1 Pharmacy, Inc.      2 Do you see that?      3 A. Yes.      4 Q. Okay. If you look at      5 Chemung, New York. Look at the bottom of      6 Page 2. It says it's owned by CVS Rx      7 Services, Inc. Do you know why that      8 exists like that, as opposed to being      9 owned by CVS Pharmacy, Inc., or another      10 CVS entity?      11 MS. MILLER: Objection.      12 THE WITNESS: No.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. When you were working there      15 last, at CVS, in 2012, which CVS entity      16 issued your paycheck?      17 A. I can't recall. I had      18 direct deposit.      19 Q. All right. From the time      20 that you worked at CVS from 2005 to 2012      21 in the department of logistics loss      22 prevention, were you involved with the      23 suspicious order monitoring program of      24 CVS?</p>

1        A. First off, the department I 2 actually worked in would be the loss 3 prevention department.  4        Q. I understand that. My 5 question was, were you involved with the 6 suspicious order monitoring program?  7        A. During a period of time, 8 Yes, I was.  9        Q. Okay. And did that start in 10 2008?  11        MS. MILLER: Objection. 12        THE WITNESS: No. I believe 13 it would have been earlier than 14 that.  15 BY MR. BAKER:  16        Q. Okay. When did you first 17 start getting involved in the suspicious 18 order monitoring program at CVS?  19        A. I believe it may have been 20 around 2007.  21        Q. Okay. Was that when you 22 were involved with the initial drafts of 23 the suspicious order monitoring policy 24 and procedure?	Page 54  1 place. 2        Q. But so far as the 3 standard -- a written standard operating 4 procedure, to your knowledge that didn't 5 exist before 2007; is that correct? 6        A. Again, there may have been 7 some documents that would have touched 8 upon it. But I can't say. I can't 9 recall.  10        Q. Okay. When did you get 11 involved -- when did you, while you were 12 employed at CVS, get involved with the 13 writing, drafting or implementation of a 14 specific suspicious order monitoring 15 policy and procedure?  16        MS. MILLER: Objection. 17        THE WITNESS: I don't know 18 if I can really recall the 19 beginning when that would have 20 happened.  21 BY MR. BAKER:  22        Q. Okay. During the time that 23 you were involved in loss prevention at 24 CVS, what sort of losses were you trying
Page 55  1        MS. MILLER: Objection. 2        THE WITNESS: Can you repeat 3 that, please?  4 BY MR. BAKER:  5        Q. Was that when you started to 6 get involved with the suspicious order 7 monitoring policy and procedure drafts?  8        MS. MILLER: Objection.  9        THE WITNESS: I would have 10 been involved in that.  11 BY MR. BAKER:  12        Q. Okay. Before August -- 13 excuse me.  14        Before 2007, are you aware 15 of any written suspicious order 16 monitoring policy and procedure in 17 existence at CVS?  18        A. There may have been some 19 processes in place that I could say would 20 be related to suspicious order 21 monitoring. I can't -- I cannot -- you 22 know, I can't recall a particular 23 standard operating procedure, but I 24 believe there were some processes in	Page 55  1 to prevent? 2        MS. MILLER: Objection. 3        THE WITNESS: So job 4 responsibilities or?  5 BY MR. BAKER:  6        Q. What were you trying to 7 prevent the loss of?  8        A. The position was to protect 9 the, you know, people, assets --  10        Q. At the time --  11        A. -- of the company.  12        MS. MILLER: If you can just 13 let him finish. Thank you.  14 BY MR. BAKER:  15        Q. As it relates to the 16 distribution of narcotics out of the 17 distribution centers, what was your 18 involvement with the suspicious order 19 monitoring process in relation to those 20 narcotics?  21        MS. MILLER: Objection. 22        THE WITNESS: I'm not sure I 23 understand your question.  24 BY MR. BAKER:

<p>1 Q. With respect to the      2 distribution of narcotics out of CVS      3 distribution centers, what was your      4 involvement while you were employed from      5 2005 to 2012 with respect to the      6 suspicious order monitoring of those      7 narcotics?</p> <p>8 MS. MILLER: Objection.</p> <p>9 THE WITNESS: Well, from a      10 loss prevention standpoint, I      11 would have been involved as far as      12 the security, safety of the      13 products from time of receipt at      14 the distribution center to when it      15 was put into the controlled drug      16 cage from when the order would      17 have fulfilled to when it would      18 have been loaded onto a trailer      19 and ultimately delivered to the      20 store and ensuring that there were      21 proper checks and balances in      22 place to prevent any diversion      23 activity of the items.</p> <p>24 BY MR. BAKER:</p>	<p>Page 58</p> <p>1 to look at this. It says here, "Tom,      2 below are some bullet points on the      3 importance of including OV orders in the      4 SOM algorithm."</p> <p>5 Do you know what OV means in      6 the context of that?</p> <p>7 MS. MILLER: Objection.</p> <p>8 BY MR. BAKER:</p> <p>9 Q. Do you know?</p> <p>10 A. I do not.</p> <p>11 Q. I'm going to ask you to      12 assume that means outside vendor. I'm      13 going to ask you to assume that SOM means      14 suspicious order monitoring. Does that      15 sound accurate as to how that should be      16 used in terms of that sentence?</p> <p>17 MS. MILLER: Objection.</p> <p>18 BY MR. BAKER:</p> <p>19 Q. To your knowledge?</p> <p>20 A. I don't know.</p> <p>21 Q. Okay. It says, "Why this is      22 needed." It says, "DEA Know Your      23 Customer requirements."</p> <p>24 Do you see that?</p>
<p>1 Q. Such as loss of the pills?      2 Would that be --</p> <p>3 MS. MILLER: Objection.</p> <p>4 BY MR. BAKER:</p> <p>5 Q. Would that be an example?</p> <p>6 A. Loss of pills, it could be      7 ensuring the proper shipment of the      8 pills. Also the, you know, proper      9 receipt.</p> <p>10 MR. BAKER: Exhibit 104      11 please.      12 (Document marked for      13 identification as Exhibit      14 CVS-Devlin-P-104.)</p> <p>15 BY MR. BAKER:</p> <p>16 Q. This is an e-mail dated      17 1/8/2013 from Craig Schiavo to Tom      18 Bourque at CVS. This was after you were      19 gone; is that right?</p> <p>20 A. I was not employed in 2013.</p> <p>21 Q. Okay. Do you know who Craig      22 Schiavo is and who Tom Bourque are?</p> <p>23 A. No.</p> <p>24 Q. All right. Let me ask you</p>	<p>Page 59</p> <p>1 A. I see that on the document,      2 yes.</p> <p>3 Q. Do you know what Know Your      4 Customer means in the context of      5 suspicious order monitoring?</p> <p>6 MS. MILLER: Objection.</p> <p>7 BY MR. BAKER:</p> <p>8 Q. If you know, just tell me.      9 If you don't, just tell me that you      10 don't.</p> <p>11 A. I believe who are you      12 shipping the controls to.</p> <p>13 Q. Is that it, just to whom you      14 are shipping? That's all it means to      15 you?</p> <p>16 A. That's -- yes.</p> <p>17 Q. Does that mean anything more      18 than that to you?</p> <p>19 MS. MILLER: Objection.</p> <p>20 THE WITNESS: No.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Do you know what the DEA      23 definition of Know Your Customer even      24 means?</p>

	Page 62		Page 64
1	MS. MILLER: Objection.	1	hydrocodone pills --
2	THE WITNESS: No, I don't --	2	MS. MILLER: Objection.
3	I don't recall that.	3	BY MR. BAKER:
4	BY MR. BAKER:	4	Q. -- at a CVS facility?
5	Q. When you were employed at	5	A. After leaving CVS in 2012, I
6	CVS in the logistics loss prevention	6	cannot speak to who was responsible for
7	program, did you have responsibilities	7	what.
8	with respect to the suspicious order	8	Q. Okay. I'm just asking, is
9	monitoring program?	9	that the type of thing that, when you
10	A. I was involved in the	10	were there, if something like this
11	process, yes.	11	happened, it would come under loss
12	Q. Okay. And getting involved	12	prevention, is that the department it
13	in that process, did you think -- did you	13	would come under?
14	take it upon yourself to learn what the	14	MS. MILLER: Objection.
15	definition of Know Your Customer means	15	THE WITNESS: I don't recall
16	with respect to DEA expectations?	16	a 68,000 loss.
17	MS. MILLER: Objection.	17	BY MR. BAKER:
18	THE WITNESS: I'm not sure I	18	Q. I didn't say it occurred
19	understand your question.	19	while you were there. I said if it
20	BY MR. BAKER:	20	happened when you were there, is this the
21	Q. Did you -- do you -- does	21	type of thing that would come under loss
22	that phrase mean anything to you, Know	22	prevention for loss prevention to
23	Your Customer, in the context of DEA	23	investigate?
24	expectations with respect to suspicious	24	MS. MILLER: Objection.
	Page 63		Page 65
1	order monitoring?	1	THE WITNESS: I believe it
2	MS. MILLER: Objection.	2	would be a -- not only loss
3	Give me a chance to object. Go	3	prevention involved, but from an
4	ahead, Frank.	4	operational standpoint involvement
5	THE WITNESS: As I	5	also.
6	mentioned, know who you're	6	BY MR. BAKER:
7	shipping the product to.	7	Q. Okay. Do you know what a
8	BY MR. BAKER:	8	Form 106 is with the DEA?
9	Q. Okay. Now, let me ask to	9	A. I can recall the term. I
10	you look down below. It says, "Potential	10	believe it's if you have a loss of
11	issues if not account for in realtime."	11	controlled drugs.
12	Do you see where the star is	12	Q. And when something like this
13	where the asterisk is? It says, "Stores	13	happens, if something like this happened
14	can place phone orders which have no	14	when you were there, where 68,000 pills
15	visibility to until a later time.	15	were lost, is that the type of thing that
16	Currently have a store which had a 68,000	16	would have caused you to fill out a Form
17	hydrocodone pill loss and was placing	17	106 and send it to the DEA?
18	phone orders to outside vendors."	18	MS. MILLER: Objection.
19	Do you see that?	19	THE WITNESS: No.
20	A. I do.	20	BY MR. BAKER:
21	Q. This is an example of loss	21	Q. Who would have done that, if
22	prevention -- or this is an example of	22	anybody?
23	something that would come under loss	23	MS. MILLER: Objection.
24	prevention, would it not, losing 68,000	24	THE WITNESS: It would

<p style="text-align: right;">Page 66</p> <p>1 depend on where it was originating 2 from.</p> <p>3 BY MR. BAKER:</p> <p>4 Q. So if 68,000 pills were lost 5 in the CVS chain, are you saying that 6 that's not something that should be 7 reported to the DEA?</p> <p>8 MS. MILLER: Objection.</p> <p>9 THE WITNESS: I didn't say 10 that.</p> <p>11 BY MR. BAKER:</p> <p>12 Q. Okay. Why would you not 13 fill out a Form 106 in that instance 14 then?</p> <p>15 MS. MILLER: Objection. 16 Mischaracterizes testimony.</p> <p>17 THE WITNESS: Again, when I 18 was there?</p> <p>19 BY MR. BAKER:</p> <p>20 Q. Yes.</p> <p>21 A. It wasn't my responsibility.</p> <p>22 Q. Who would have been the 23 person when you were there?</p> <p>24 A. It would be the entity that</p>	<p style="text-align: right;">Page 68</p> <p>1 time item orders into our SOM system."</p> <p>2 Do you see that?</p> <p>3 A. I do. I would like a moment 4 to read it to myself.</p> <p>5 Q. Okay. I'm reading it to you 6 as we go along.</p> <p>7 A. I'm a very visual person.</p> <p>8 Q. I understand, but I have 9 limited time and I don't have time for 10 you to re-read stuff that I'm reading 11 directly to you. If we could just move 12 through it. I'm not trying to be ugly to 13 you, but I really want to move through 14 this.</p> <p>15 MS. MILLER: Bill, I know, 16 you've just got to give him a 17 chance to read it himself.</p> <p>18 THE WITNESS: I respect your 19 time, sir. I really do. And I, 20 you know, certainly want to 21 cooperate as much as possible. I 22 just, from a learning standpoint, 23 I don't do well if people read to 24 me and then I have to comment.</p>
<p style="text-align: right;">Page 67</p> <p>1 the possible loss originated from.</p> <p>2 Q. Meaning what, meaning like 3 the distribution center?</p> <p>4 A. If it -- well, in this 5 instance here, you are mentioning an 6 outside vendor.</p> <p>7 Q. The outside vendor orders -- 8 go back to the document. Go back to the 9 document. It says, "Below are bullets on 10 the importance of including outside 11 vendor orders in the SOM algorithm."</p> <p>12 Do you see that, at the top?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. It says, "Why it is 15 needed. Know your customer 16 requirements."</p> <p>17 Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. It says, "In order 20 for dispensing data contained in the 21 algorithm be useful, we must account for 22 all controlled substances ordered. To 23 track all NDC numbers ordered by store 24 and have ability to add unknown/first</p>	<p style="text-align: right;">Page 69</p> <p>1 I literally have to read.</p> <p>2 So I apologize for that. But 3 that's -- that's just who I am.</p> <p>4 BY MR. BAKER:</p> <p>5 Q. Okay.</p> <p>6 A. I'm reading it. I don't 7 know if I still fully understand what 8 it --</p> <p>9 Q. Okay. Well, it says here, 10 "Potential issues if not account for in 11 realtime. Store may order a little from 12 both the outside vendor and the DC to 13 stay under the radar."</p> <p>14 Do you know what that means?</p> <p>15 A. No. I didn't write this 16 document.</p> <p>17 Q. Okay. When you were there 18 at CVS, were the stores that your 19 distribution centers over which you were 20 loss prevention director, did those 21 include distribution centers that were 22 licensed to distribute narcotics from the 23 distribution center to a CVS pharmacy?</p> <p>24 MS. MILLER: Objection.</p>

<p style="text-align: right;">Page 70</p> <p>1 BY MR. BAKER:</p> <p>2 Q. Yes or no?</p> <p>3 MS. MILLER: Objection.</p> <p>4 THE WITNESS: Yes.</p> <p>5 BY MR. BAKER:</p> <p>6 Q. Okay. And did those</p> <p>7 narcotics include Schedule III narcotics?</p> <p>8 MS. MILLER: Objection.</p> <p>9 THE WITNESS: I believe so.</p> <p>10 BY MR. BAKER:</p> <p>11 Q. And did those narcotics</p> <p>12 include hydrocodone combination products?</p> <p>13 MS. MILLER: Objection.</p> <p>14 THE WITNESS: I believe so.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. And do you know hydrocodone</p> <p>17 combination products to be known as</p> <p>18 opioids?</p> <p>19 MS. MILLER: Objection.</p> <p>20 THE WITNESS: Again, I</p> <p>21 always used the term "controlled</p> <p>22 substance."</p> <p>23 BY MR. BAKER:</p> <p>24 Q. Okay. Do you know what the</p>	<p style="text-align: right;">Page 72</p> <p>1 of Media File Number 2. The time</p> <p>2 is 9:30.</p> <p>3 BY MR. BAKER:</p> <p>4 Q. You have in front of you the</p> <p>5 DEA drug fact sheet.</p> <p>6 Do you see that?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Okay. It lists hydrocodone.</p> <p>9 It says, "Hydrocodone is the most</p> <p>10 frequently prescribed opioid in the</p> <p>11 United States."</p> <p>12 Do you see that?</p> <p>13 A. No.</p> <p>14 MS. MILLER: Bill, can you</p> <p>15 direct him to a page?</p> <p>16 BY MR. BAKER:</p> <p>17 Q. Okay. Go to the second page</p> <p>18 of your DEA drug fact sheet. If you look</p> <p>19 on the monitor, it's right in front of</p> <p>20 you.</p> <p>21 Do you see it?</p> <p>22 A. It's easier for me to look</p> <p>23 at the paper.</p> <p>24 Q. Do you see where it says</p>
<p style="text-align: right;">Page 71</p> <p>1 term "opioid" means?</p> <p>2 MS. MILLER: Objection.</p> <p>3 MR. BAKER: Pull up</p> <p>4 Exhibit 64 please.</p> <p>5 (Document marked for</p> <p>6 identification as Exhibit</p> <p>7 CVS-Devlin-P-64.)</p> <p>8 BY MR. BAKER:</p> <p>9 Q. I'd like you to pull up</p> <p>10 hydrocodone, which is the second page.</p> <p>11 A. Would I be able to take a</p> <p>12 break?</p> <p>13 Q. Do you need to go to the</p> <p>14 bathroom?</p> <p>15 A. I do.</p> <p>16 MR. BAKER: Okay. Sure. Go</p> <p>17 ahead.</p> <p>18 MS. MILLER: Go off the</p> <p>19 record.</p> <p>20 THE VIDEOGRAPHER: Going off</p> <p>21 the record. The time is 9:20.</p> <p>22 (Short break.)</p> <p>23 THE VIDEOGRAPHER: We are</p> <p>24 going back on record. Beginning</p>	<p style="text-align: right;">Page 73</p> <p>1 "hydrocodone" at the top?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you see where it</p> <p>4 says, "Hydrocodone is the most frequently</p> <p>5 prescribed opioid in the United States</p> <p>6 and is associated with more drug abuse</p> <p>7 and diversion than any other illicit</p> <p>8 (sic) or illicit opioid."</p> <p>9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. Did you know this</p> <p>12 before it was read to you today by</p> <p>13 looking at this DEA drug fact sheet?</p> <p>14 MS. MILLER: Objection.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. Did you know this?</p> <p>17 MS. MILLER: Objection.</p> <p>18 THE WITNESS: Hydrocodone,</p> <p>19 per se, I'm not sure.</p> <p>20 BY MR. BAKER:</p> <p>21 Q. Okay. Did the distribution</p> <p>22 centers over which you were the logistics</p> <p>23 director -- director of logistics and</p> <p>24 loss prevention, distribute hydrocodone</p>

Page 74	Page 76
<p>1 combination products?</p> <p>2 A. I believe so.</p> <p>3 Q. Okay. Do you know those to</p> <p>4 be opioids?</p> <p>5 MS. MILLER: Objection.</p> <p>6 THE WITNESS: Not at the</p> <p>7 time.</p> <p>8 BY MR. BAKER:</p> <p>9 Q. Okay. Do you know it now?</p> <p>10 A. Now?</p> <p>11 Q. Do you know that now?</p> <p>12 A. After reading, seeing this,</p> <p>13 yes.</p> <p>14 Q. Okay. Have you ever heard</p> <p>15 of the opioid crisis?</p> <p>16 A. I have recently heard of it,</p> <p>17 yes.</p> <p>18 Q. Did you know about it to be</p> <p>19 in existence which you were employed at</p> <p>20 CVS?</p> <p>21 MS. MILLER: Objection.</p> <p>22 THE WITNESS: No.</p> <p>23 BY MR. BAKER:</p> <p>24 Q. That was never discussed</p>	<p>1 MR. BAKER: Don't have 58?</p> <p>2 Go to exhibit 102.</p> <p>3 MS. MILLER: Is that a new</p> <p>4 exhibit, Bill?</p> <p>5 MR. BAKER: Yeah, Exhibit</p> <p>6 102.</p> <p>7 MS. MILLER: Is that a new</p> <p>8 one?</p> <p>9 MR. BAKER: Yes.</p> <p>10 (Document marked for</p> <p>11 identification as Exhibit</p> <p>12 CVS-Devlin-P-102.)</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Here.</p> <p>15 MS. MILLER: Thank you.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. I've handed you Exhibit 102,</p> <p>18 which is an e-mail from Ron Buzzeo to Amy</p> <p>19 Lynn Brown dated 2/21/2008. First of</p> <p>20 all, do you know who Ron Buzzeo is? Do</p> <p>21 you know who Ron Buzzeo is?</p> <p>22 A. Yes.</p> <p>23 Q. He owns a company named</p> <p>24 Cegedim. Is that it? Is that the name</p>
<p>1 with anybody at CVS, the opioid crisis or</p> <p>2 the nature of the opioid crisis going on</p> <p>3 from 2005 to 2012 when you were in loss</p> <p>4 prevention logistics?</p> <p>5 MS. MILLER: Objection.</p> <p>6 BY MR. BAKER:</p> <p>7 Q. That was never discussed?</p> <p>8 MS. MILLER: Objection.</p> <p>9 THE WITNESS: No, not that I</p> <p>10 can recall.</p> <p>11 BY MR. BAKER:</p> <p>12 Q. Did you ever attend any DEA</p> <p>13 meetings of any type, any DEA conferences</p> <p>14 of any type?</p> <p>15 A. Not that I can recall.</p> <p>16 Q. Did you ever attend any</p> <p>17 training on the opioid crisis while you</p> <p>18 were at CVS in logistics and loss</p> <p>19 prevention?</p> <p>20 A. No, not that I recall.</p> <p>21 MR. BAKER: Okay. Go to</p> <p>22 Exhibit Number 58.</p> <p>23 MS. MILLER: I don't think</p> <p>24 we have Exhibit 58.</p>	<p>1 of it?</p> <p>2 MS. MILLER: Objection.</p> <p>3 THE WITNESS: Something like</p> <p>4 that.</p> <p>5 BY MR. BAKER:</p> <p>6 Q. It was a consulting company</p> <p>7 that you were in touch with while you</p> <p>8 were at CVS. You were in touch with him</p> <p>9 directly; is that correct?</p> <p>10 A. On occasion, yes.</p> <p>11 Q. Okay. In the context of</p> <p>12 developing a suspicious order monitoring</p> <p>13 system at CVS?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Look at these letters</p> <p>16 that are attached to this e-mail. These</p> <p>17 are DEA letters dated September 27, 2006</p> <p>18 and February 7, 2007. Do you see those</p> <p>19 two letters? And the last one, third</p> <p>20 letter, December 27, 2007.</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. Have you ever read</p> <p>24 these letters before today?</p>

<p style="text-align: right;">Page 78</p> <p>1 A. Yes.</p> <p>2 Q. Okay. Did you read all</p> <p>3 three of them before today?</p> <p>4 A. Not fully.</p> <p>5 Q. Okay. Pull up the first</p> <p>6 letter. We're going to the third page of</p> <p>7 the exhibit.</p> <p>8 MS. MILLER: And just for</p> <p>9 purposes of the transcript. Do</p> <p>10 you -- were you asking him back in</p> <p>11 his time at CVS if he read these</p> <p>12 letters, when he was employed at</p> <p>13 CVS?</p> <p>14 BY MR. BAKER:</p> <p>15 Q. Let's ask it both ways.</p> <p>16 When you were employed at CVS, did you</p> <p>17 read these letters?</p> <p>18 A. I can recall the concept of</p> <p>19 one of the letters.</p> <p>20 Q. Okay.</p> <p>21 A. Not sure of the date.</p> <p>22 Q. Okay. This e-mail is dated</p> <p>23 2/21/08 from Ron Buzzeto to Amy Brown,</p> <p>24 correct?</p>	<p style="text-align: right;">Page 80</p> <p>1 suspicious orders when discovered by the</p> <p>2 registrant. Suspicious orders include</p> <p>3 orders of unusual size, orders deviating</p> <p>4 substantially from a normal pattern and</p> <p>5 orders of unusual frequency."</p> <p>6 Did I quote that letter</p> <p>7 correctly?</p> <p>8 A. I believe so.</p> <p>9 Q. Okay. Is this the letter</p> <p>10 that -- is this the content of what you</p> <p>11 read in the letters that you were</p> <p>12 provided when you were at CVS?</p> <p>13 MS. MILLER: Objection.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. The letters from DEA?</p> <p>16 MS. MILLER: Objection.</p> <p>17 THE WITNESS: I can recall</p> <p>18 seeing a letter. I can't recall</p> <p>19 if that exact language was in the</p> <p>20 letter.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Are you familiar with the</p> <p>23 concept of 21 C.F.R. 1301.74?</p> <p>24 MS. MILLER: Objection.</p>
<p style="text-align: right;">Page 79</p> <p>1 A. That's what it states.</p> <p>2 Q. And it attaches these three</p> <p>3 letters, correct?</p> <p>4 A. It appears so.</p> <p>5 Q. Okay. Let's go to the first</p> <p>6 letter, September 27, 2006. Do you see</p> <p>7 that one?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Go to Page 2 of that</p> <p>10 letter. And you'll see about halfway</p> <p>11 down where it says, "The DEA regulations</p> <p>12 require." If you can bold that.</p> <p>13 Okay. I want you to read</p> <p>14 this with me.</p> <p>15 "The DEA regulations require</p> <p>16 all distributors to report suspicious</p> <p>17 orders of controlled substances.</p> <p>18 Specifically, the regulations state in 21</p> <p>19 C.F.R. 1301.74(b): 'The registrant shall</p> <p>20 design and operate a system to disclose</p> <p>21 to the registrant suspicious orders of</p> <p>22 controlled substances. The registrant</p> <p>23 shall inform the field division office of</p> <p>24 the administration in his area of</p>	<p style="text-align: right;">Page 81</p> <p>1 THE WITNESS: No.</p> <p>2 BY MR. BAKER:</p> <p>3 Q. Okay. Were you not familiar</p> <p>4 with that Code of Federal Regulation when</p> <p>5 you were director of loss prevention,</p> <p>6 logistics?</p> <p>7 A. I wouldn't be familiar with</p> <p>8 the number.</p> <p>9 Q. How about the text of it,</p> <p>10 "The registrant shall design and operate</p> <p>11 a system to disclose to the registrant</p> <p>12 suspicious orders of controlled</p> <p>13 substances." Were you familiar with that</p> <p>14 text?</p> <p>15 A. Conceptually.</p> <p>16 Q. Okay. Move to the next</p> <p>17 letter, February 2007. If you look at</p> <p>18 the bottom of Paragraph 3. It says,</p> <p>19 This responsibility is critical."</p> <p>20 Do you see that?</p> <p>21 A. No. Okay.</p> <p>22 Q. Okay. Start up at the top.</p> <p>23 Start up at the top under background. It</p> <p>24 says --</p>

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<p>1           MR. BAKER: Go back.</p> <p>2 BY MR. BAKER:</p> <p>3       Q. All right. It says, "As</p> <p>4 each of you is undoubtedly aware, the</p> <p>5 abuse of controlled prescription drugs is</p> <p>6 a serious and growing health problem in</p> <p>7 the country"; is that correct?</p> <p>8       A. That's what it states in the</p> <p>9 letter, yes.</p> <p>10      Q. Okay. Did you read this</p> <p>11 while you were at CVS?</p> <p>12      A. I can't --</p> <p>13      MS. MILLER: Objection.</p> <p>14 BY MR. BAKER:</p> <p>15      Q. Yes or no?</p> <p>16      MS. MILLER: Objection.</p> <p>17 BY MR. BAKER:</p> <p>18      Q. Did you read it?</p> <p>19      MS. MILLER: Objection.</p> <p>20      THE WITNESS: I don't</p> <p>21 recall.</p> <p>22 BY MR. BAKER:</p> <p>23      Q. Okay. It talks about the</p> <p>24 Controlled Substance Act in the next</p>	<p>1           MS. MILLER: Objection.</p> <p>2       THE WITNESS: I stated that,</p> <p>3 yes.</p> <p>4 BY MR. BAKER:</p> <p>5       Q. Okay. You were physically</p> <p>6 located in Rhode Island, correct?</p> <p>7       MS. MILLER: Objection.</p> <p>8       THE WITNESS: Yes.</p> <p>9 BY MR. BAKER:</p> <p>10      Q. And the distribution centers</p> <p>11 that were licensed to distribute these</p> <p>12 narcotics for CVS were located in various</p> <p>13 spots across the United States, which</p> <p>14 we've gone over with you thus far in your</p> <p>15 deposition, correct?</p> <p>16      MS. MILLER: Objection.</p> <p>17      THE WITNESS: That is</p> <p>18 correct.</p> <p>19 BY MR. BAKER:</p> <p>20      Q. Okay. And you were the</p> <p>21 director of logistics and loss prevention</p> <p>22 over all of those distribution centers or</p> <p>23 just the one in Rhode Island?</p> <p>24      A. I had responsibility for the</p>
<p>1 paragraph. Do you see that? "The CSA</p> <p>2 was designed by Congress to combat</p> <p>3 diversion by providing for a closed</p> <p>4 system of drug distribution."</p> <p>5       Do you see that?</p> <p>6       A. Yes.</p> <p>7       Q. Okay. Do you see at the</p> <p>8 bottom it talks about, it says,</p> <p>9 "Distributors are, of course, one of the</p> <p>10 key components of this distribution</p> <p>11 chain."</p> <p>12       Do you see that?</p> <p>13       A. No.</p> <p>14       Q. Okay. Look in there where</p> <p>15 it says that. Look, look where my finger</p> <p>16 is. Do you see this? "Distributors are,</p> <p>17 of course, one of the key components of</p> <p>18 the distribution chain."</p> <p>19       Do you see that?</p> <p>20       A. I do see that.</p> <p>21       Q. Okay. You were the director</p> <p>22 of loss prevention logistics over a</p> <p>23 distribution center that distributed</p> <p>24 these narcotics, correct?</p>	<p>1 safety, security, quality in all the</p> <p>2 distribution centers.</p> <p>3       Q. Okay. And then it says,</p> <p>4 "This responsibility is critical as</p> <p>5 Congress has expressly declared that the</p> <p>6 illegal distribution of controlled</p> <p>7 substances has a substantial and</p> <p>8 detrimental effect on the health and</p> <p>9 general welfare of the American people."</p> <p>10      Did I quote that correctly</p> <p>11 from the letter?</p> <p>12      A. It appears so.</p> <p>13      Q. Okay. Did you read that</p> <p>14 while you were employed at CVS and when</p> <p>15 you were the director of logistics loss</p> <p>16 prevention from 2005 to 2012?</p> <p>17      MS. MILLER: Objection.</p> <p>18      THE WITNESS: I don't recall</p> <p>19 that language.</p> <p>20 BY MR. BAKER:</p> <p>21      Q. Okay. All right. Turn to</p> <p>22 the February -- February 7, 2007 letter,</p> <p>23 Page 3 where it talks about circumstances</p> <p>24 that might be indicative of diversion.</p>

<p style="text-align: right;">Page 86</p> <p>1 Do you see that?      2 A. Yes, sir.      3 Q. Okay. One of the      4 circumstances, it says, "Number 1,      5 ordering excessive quantities of a      6 limited variety of controlled substances,      7 e.g., ordering only phentermine,      8 hydrocodone, alprazolam."      9 Do you see that?      10 A. I do see that.      11 Q. And hydrocodone is one of      12 those products that was distributed out      13 of the distribution centers by the CVS      14 distribution centers to CVS pharmacies,      15 correct?      16 A. During the time I was there,      17 yes.      18 Q. Okay. And it says at the      19 bottom, "Ordering the same controlled      20 substance from multiple distributors."      21 Do you see that?      22 A. I do see that.      23 Q. Okay. Do you remember the      24 concept of outside vendors that I went</p>	<p style="text-align: right;">Page 88</p> <p>1 distribution centers at the store      2 level.      3 BY MR. BAKER:      4 Q. At any time when you were      5 involved with suspicious order      6 monitoring, did you attempt to monitor      7 the purchase by CVS pharmacies of      8 hydrocodone combination products from      9 outside vendors, yes or no?      10 A. I can't recall.      11 Q. You can't recall. Is that      12 something that you say you don't even      13 remember doing, is that what you mean?      14 MS. MILLER: Objection.      15 THE WITNESS: I guess I just      16 can't recall.      17 BY MR. BAKER:      18 Q. Can you say you even did it?      19 If you can't recall it, is it true that      20 you can't say that you actually even did      21 that, that you monitored outside vendor      22 purchases by CVS pharmacies?      23 MS. MILLER: Objection.      24 BY MR. BAKER:</p>
<p style="text-align: right;">Page 87</p> <p>1 over with you earlier today, outside      2 vendors?      3 A. I can recall that term that      4 you used, yes.      5 Q. Okay. The hydrocodone      6 combination products that were being      7 distributed out of the CVS distribution      8 centers to the CVS pharmacies, that was      9 not the only source of hydrocodone      10 combination products that were purchased      11 by those CVS pharmacies, am I correct?      12 MS. MILLER: Objection.      13 THE WITNESS: I'm not sure.      14 BY MR. BAKER:      15 Q. Is it true that the CVS      16 pharmacies that CVS distribution centers      17 distributed to also purchased hydrocodone      18 combination products from outside vendors      19 in addition to purchasing them from CVS      20 distribution centers?      21 MS. MILLER: Objection.      22 THE WITNESS: I'm not really      23 familiar with the, I guess,      24 purchasing outside of the</p>	<p style="text-align: right;">Page 89</p> <p>1 Q. Is that true?      2 A. Just -- I apologize, I just      3 don't remember.      4 Q. Okay. If you don't remember      5 then you can't say you actually did it      6 either, can you?      7 MS. MILLER: Objection.      8 THE WITNESS: Just, I don't      9 remember, sir.      10 BY MR. BAKER:      11 Q. Okay. Let's move forward.      12 MR. BAKER: Pull Exhibit      13 Number 18 please.      14 (Document marked for      15 identification as Exhibit      16 CVS-Devlin-P-18.)      17 BY MR. BAKER:      18 Q. This is an e-mail from Todd      19 Janson to Tom Mortelliti. And then if      20 you look down below it it says from Amy      21 Brown to various people, November 27,      22 2007. Do you see that?      23 A. I do see that.      24 Q. Okay. And it says new Rx</p>

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<p>1 DEA SOP. What does Rx DEA SOP mean to      2 you?      3 A. Pharmacy standard operating      4 procedures.      5 Q. Okay. So this discusses a      6 pharmacy standard operating procedure and      7 attached to it is a seventh draft updated      8 November 2007. Do you see that?      9 A. You're on the third page?      10 Q. Yes, sir.      11 A. Yes.      12 Q. Okay. Go back to the first      13 page, the e-mail at the bottom. It says,      14 "We are still in the process of writing      15 the suspicious order monitoring section      16 of the SOP."      17 Do you see that?      18 A. I do.      19 Q. Okay. Let me ask you, are      20 you familiar with any written suspicious      21 order monitoring policy and procedure      22 that existed within the SOP at CVS before      23 this draft?      24 MS. MILLER: Objection.</p>	<p>1 Number 57.      2 (Document marked for      3 identification as Exhibit      4 CVS-Devlin-P-57.)      5 BY MR. BAKER:      6 Q. All right. This is an      7 e-mail from Amy Propatier. Now, you know      8 her, do you not?      9 A. Yes.      10 Q. Okay. And it's dated      11 April 3, 2009. And it says, "Good      12 morning. Attached is the DEA SOP which      13 was implemented in December 2007."      14 All right. Stop right      15 there. All right. Is it true that to      16 your recollection that DEA SOP that I      17 handed you, which is Exhibit 18, was      18 implemented in December of 2007?      19 A. Again, I would need a chance      20 to read it.      21 Q. Okay. It says, "We have      22 made some recent updates to the SOP.      23 Please note that we have updated the      24 record retention period from five years</p>
<p>1 THE WITNESS: Again, as I      2 testified earlier, not necessarily      3 an SOP, but I believe there were      4 some processes in place that could      5 be related to suspicious order      6 monitoring.      7 BY MR. BAKER:      8 Q. Okay. This draft that we      9 are talking about did not include a      10 suspicious order monitoring standard      11 operating procedure, did it?      12 A. I'd have to look --      13 MS. MILLER: Do you want a      14 chance to look at the document?      15 THE WITNESS: Yeah, I --      16 BY MR. BAKER:      17 Q. That's what the document      18 says, the very first page, correct?      19 A. Right. But I haven't read      20 the document.      21 Q. Okay. I'm going to move      22 forward, because we're -- we have limited      23 time, okay.      24 This next document is</p>	<p>1 to two years. Also, the SOM section is      2 still not included in the SOP in the      3 event of an audit and the question comes      4 up, please direct them to corporate,      5 Frank or myself for the explanation of      6 the program."      7 Now let me ask you about      8 that.      9 It says, "Also the SOM      10 section is still not included in the      11 SOP."      12 Do you know what that means?      13 A. Just I don't recall this      14 e-mail.      15 Q. Okay. And do you know who      16 she is referring to? Is she referring to      17 you, Frank Devlin? Is that the point of      18 contact if the -- if somebody questioned      19 this SOP in the context of a DEA audit,      20 they should contact you?      21 MS. MILLER: Objection.      22 THE WITNESS: If there was a      23 DEA audit I may be contacted.      24 BY MR. BAKER:</p>

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<p>1 Q. Okay. Are you the Frank      2 that's referred to in this e-mail, do you      3 know?</p> <p>4 A. I can't say 100 percent.</p> <p>5 Q. Okay. Would you say more      6 likely than not based upon the context of      7 the e-mail, that you're that Frank?</p> <p>8 A. It could be in reference to      9 me, yes.</p> <p>10 Q. Okay. Amy Propatier at the      11 time, what was her title, do you know?</p> <p>12 A. I know she worked in the      13 logistics department.</p> <p>14 Q. Okay. Do you know that --      15 that -- are you aware of the term "DEA      16 compliance coordinator"?</p> <p>17 A. I've heard the term.</p> <p>18 Q. Did you know whether or not      19 that's what she was considered to be at      20 CVS?</p> <p>21 MS. MILLER: Objection.</p> <p>22 THE WITNESS: I don't recall      23 her exact title.</p> <p>24 BY MR. BAKER:</p>	<p>1 recall the exact positions.</p> <p>2 MR. BAKER: Okay. Let's      3 move forward. Go to Exhibit 94.      4 (Document marked for      5 identification as Exhibit      6 CVS-Devlin-P-94.)</p> <p>7 BY MR. BAKER:</p> <p>8 Q. Do you recall that with      9 respect to the 2009 SOP in relation to      10 the suspicious order monitoring, was it      11 still not defined at the time -- at the      12 time that it was revised in December of      13 2009? Do you recall that one way or the      14 other?</p> <p>15 MS. MILLER: Objection.</p> <p>16 THE WITNESS: Do you have      17 something that I'm supposed to be      18 looking at?</p> <p>19 BY MR. BAKER:</p> <p>20 Q. Sure. I'll let you look at      21 Exhibit 48. We'll go back to that.      22 (Document marked for      23 identification as Exhibit      24 CVS-Devlin-P-48.)</p>
<p>1 Q. Okay. If the DEA had walked      2 in and asked you in 2009 who is the DEA      3 compliance coordinator, who would you      4 have said that would have been?</p> <p>5 A. If they walked into where?</p> <p>6 Q. To your office in Rhode      7 Island.</p> <p>8 A. I'm not sure.</p> <p>9 Q. Okay. Was there a DEA      10 compliance coordinator in 2009 when you      11 were employed there?</p> <p>12 A. I'm just -- I mean there are      13 people involved with DEA. I'm just -- I      14 just don't recall the exact titles.</p> <p>15 Q. Okay. Let me ask you      16 something. Was there a DEA compliance      17 coordinator? Was there somebody that had      18 the title DEA compliance coordinator when      19 you were employed there in 2009 at CVS?</p> <p>20 MS. MILLER: Objection.</p> <p>21 Asked and answered.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Was there such a position?</p> <p>24 A. Again, I just -- I don't</p>	<p>1 MS. MILLER: So we're not      2 using 94?</p> <p>3 MR. BAKER: No, we're not.      4 We're using 48 again.</p> <p>5 BY MR. BAKER:</p> <p>6 Q. I want you to go to -- look      7 here. At the bottom, it's Roman Numeral      8 VIII-VI. The Bates number is 24916.      9 Do you see that?</p> <p>10 A. 24916?</p> <p>11 Q. At the bottom --</p> <p>12 A. Yes.</p> <p>13 Q. -- where your right hand is.</p> <p>14 MS. MILLER: It's flagged      15 also.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. You have it flagged. Okay.      18 Do you see where it says      19 suspicious order monitoring?      20 Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Okay. So what it says on      23 the next page, it says, "These parameters      24 are documented in SOP" -- and there's a</p>

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<p>1 blank. "Ordering quantity parameters for      2 controlled drugs, being developed and      3 written."</p> <p>4 Do you see that?</p> <p>5 A. I do see that.</p> <p>6 Q. Okay. Does that mean it's      7 incomplete at this point, at least from      8 the standpoint of it's being developed      9 and written? Is that what that means?</p> <p>10 MS. MILLER: Objection.</p> <p>11 THE WITNESS: I'm not sure      12 what it means.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Were you involved in this      15 process at all of drafting?</p> <p>16 A. I would have been involved      17 to some extent.</p> <p>18 Q. Okay. Of drafting the      19 suspicious order monitoring policy and      20 procedure, would you have been involved      21 in that?</p> <p>22 A. I would have been involved,      23 yes.</p> <p>24 Q. Okay. But this revision</p>	<p>1 showed you in that series of three      2 letters was received by CVS from the DEA      3 from Mr. Rannazzisi, correct?</p> <p>4 MS. MILLER: Objection.</p> <p>5 BY MR. BAKER:</p> <p>6 Q. Do you remember the      7 February 2007 letters?</p> <p>8 A. Again, I don't recall when      9 I -- when I actually saw the letter.</p> <p>10 Q. Okay. So at this point,      11 we're now 12/11 of 2009. And there's      12 still no written policy and procedure for      13 suspicious order monitoring at CVS      14 because it's still being developed and      15 written; is that correct?</p> <p>16 MS. MILLER: Objection.</p> <p>17 THE WITNESS: Again, I'd      18 want to read through the document.</p> <p>19 BY MR. BAKER:</p> <p>20 Q. At least that's what the      21 document says; is that right?</p> <p>22 MS. MILLER: Objection.</p> <p>23 THE WITNESS: I haven't read      24 the document.</p>
<p>1 date is dated 12/11/09. That's the first      2 page, correct? Go back, at the top -- up      3 here. Upper right-hand corner.</p> <p>4 A. Yeah, appears to be.</p> <p>5 Q. Okay. And this is a      6 continuation of the one that was first      7 effectively published in the      8 suspicious -- in the SOP 12/1 of '07      9 that's being updated 12/11/09; is that      10 correct?</p> <p>11 A. Again, I'm -- you know, as      12 far as the dates go.</p> <p>13 Q. Well, just -- I mean, just      14 isn't that what it says?</p> <p>15 A. That's what the document      16 says.</p> <p>17 Q. Okay. The document says the      18 effective date of the initial controlled      19 drug DEA standard operating procedure      20 manual was 12/1 of '07, correct?</p> <p>21 A. That's what the document      22 says.</p> <p>23 Q. All right. And that's about      24 ten months after that last letter that I</p>	<p>1 BY MR. BAKER:</p> <p>2 Q. Okay. Let's go back to the      3 document again. Go back to where I had      4 you tabbed. And it says, "These      5 parameters are documented in SOP" --      6 blank -- "order quantity parameters for      7 controlled drugs, being developed and      8 written."</p> <p>9 That's what it says, right?</p> <p>10 A. Are you on 24916 Bates      11 number?</p> <p>12 Q. Yes, sir. 24917. Do you      13 see it?</p> <p>14 A. I do see it.</p> <p>15 Q. Okay. That's what the      16 document states, correct?</p> <p>17 A. That's what the document      18 states.</p> <p>19 Q. Let's move on. Let's go to      20 Exhibit 94. All right. This is an      21 e-mail dated 11/5 of 2009. It says from      22 John Mortelliti to Christopher Knight.      23 It says, "Sounds good. I'm trying to get      24 a rough draft SOM SOP to you prior to the</p>

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<p>1 meeting. This is a big issue with CVS 2 and the DEA."</p> <p>3 Now, did I read that 4 correctly?</p> <p>5 A. That's what it states, yes.</p> <p>6 Q. And you said you were 7 involved somewhat with the drafting of 8 the SOM SOP, correct?</p> <p>9 A. I was involved in the 10 drafting of the DEA SOPs.</p> <p>11 Q. Is that a yes?</p> <p>12 MS. MILLER: Objection.</p> <p>13 THE WITNESS: I was 14 involved.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. Okay. You were. Okay. Was 17 that a big issue with CVS and the DEA? 18 Is that accurate?</p> <p>19 A. I don't recall that.</p> <p>20 Q. Okay. Let's move to the 21 next exhibit, Number 98.</p> <p>22 (Document marked for 23 identification as Exhibit 24 CVS-Devlin-P-98.)</p>	<p>1 department at CVS corporate headquarters.</p> <p>2 Q. Okay. So it says, "Good 3 morning, Amy. I attached the PSE SOP to 4 this e-mail. The control drug SOP is 5 being reviewed by counsel. I hope to 6 receive it back today."</p> <p>7 So at this point 8/23/10, is 8 there still no control drug SOP in 9 existence at CVS?</p> <p>10 MS. MILLER: Objection.</p> <p>11 THE WITNESS: That's what it 12 states in the e-mail.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Okay. And at the bottom, it 15 says, "From Frank Devlin." This is you 16 who generated this e-mail, August 23, 17 2010, to John Mortelliti copying Amy 18 Propatier. Subject, "DEA SOP."</p> <p>19 What is the DEA SOP that 20 you're referring to?</p> <p>21 A. The DEA standard operating 22 procedure.</p> <p>23 Q. To include that suspicious 24 order monitoring paragraph to finish it</p>
<p>1 BY MR. BAKER:</p> <p>2 Q. This is an e-mail dated 8/23 3 of 2010 from John Mortelliti to Amy 4 Propatier with you -- actually to you, 5 Frank Devlin, correct? John Mortelliti 6 to Frank Devlin?</p> <p>7 A. That's what it states, yes.</p> <p>8 Q. 8/23/2010; is that correct?</p> <p>9 A. That's what it states, yes.</p> <p>10 Q. Mr. Mortelliti was who at 11 that time in reference to his job at CVS?</p> <p>12 A. I believe at that time he 13 would have been a director in -- director 14 of logistics, loss prevention.</p> <p>15 Q. What office was he located 16 within?</p> <p>17 A. At that time he would have 18 been based out of the Lumberton 19 distribution center.</p> <p>20 Q. Okay. And this is to Amy 21 Propatier, who copied her. Who was she 22 at that time, to your knowledge, in 23 reference to her job at CVS?</p> <p>24 A. She worked in the logistics</p>	<p>1 up?</p> <p>2 MS. MILLER: Objection.</p> <p>3 BY MR. BAKER:</p> <p>4 Q. Is that part of what you 5 were trying to finish up?</p> <p>6 MS. MILLER: Objection.</p> <p>7 THE WITNESS: I'm just -- in 8 reading the e-mail, I mean, I can 9 read the e-mail. I don't --</p> <p>10 BY MR. BAKER:</p> <p>11 Q. Okay. We'll go through it.</p> <p>12 A. I don't recall writing this 13 e-mail.</p> <p>14 Q. Okay. Did you write this 15 e-mail?</p> <p>16 A. Just I -- it has my name on 17 it. I do not recall writing the e-mail.</p> <p>18 Q. All right. If it has your 19 name on it as "from," does that generally 20 mean that you wrote it?</p> <p>21 MS. MILLER: Objection.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Yes?</p> <p>24 A. It appears that I wrote the</p>

<p style="text-align: right;">Page 106</p> <p>1 e-mail.</p> <p>2 Q. Okay. So it says, "Good</p> <p>3 morning, John." And this is to John</p> <p>4 Mortelliti in Lumberton, New Jersey,</p> <p>5 correct?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. It says, "Can you</p> <p>8 work with Amy to get the PSE IRR and</p> <p>9 control drug IRR inserted into our DEA</p> <p>10 SOP under suspicious order monitoring?</p> <p>11 We promised this to the DEA by</p> <p>12 Wednesday."</p> <p>13 Did I quote that correctly?</p> <p>14 A. That's what it states.</p> <p>15 Q. Okay. It says, "Can you get</p> <p>16 with Amy to get the PSE IRR" --</p> <p>17 That's a chemical IRR,</p> <p>18 correct?</p> <p>19 A. Pseudoephedrine.</p> <p>20 Q. Okay. IRR is item review</p> <p>21 report; is that right?</p> <p>22 A. I believe so, yes.</p> <p>23 Q. Okay.</p> <p>24 -- "and the control drug</p>	<p style="text-align: right;">Page 108</p> <p>1 the same week, that this is Monday,</p> <p>2 August 23, correct?</p> <p>3 A. That's what the date states,</p> <p>4 yes.</p> <p>5 Q. And Wednesday would be</p> <p>6 August 25, correct?</p> <p>7 A. Yes.</p> <p>8 Q. And are you aware that the</p> <p>9 DEA was doing an inspection of the</p> <p>10 Indianapolis distribution center</p> <p>11 August 25 of 2010?</p> <p>12 A. Yeah, just I -- I just don't</p> <p>13 recall the exact date of DEA inspections.</p> <p>14 Q. Was it your intent to try to</p> <p>15 get the suspicious order monitoring</p> <p>16 policy and procedure inserted into the</p> <p>17 standard operating procedure manual of</p> <p>18 CVS before the DEA arrived August 25 of</p> <p>19 2010?</p> <p>20 MS. MILLER: Objection.</p> <p>21 THE WITNESS: No.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Was it your intent to do</p> <p>24 that?</p>
<p style="text-align: right;">Page 107</p> <p>1 IRR" -- that's an item review report?</p> <p>2 A. For control drugs, yes.</p> <p>3 Q. Okay.</p> <p>4 -- "inserted into our DEA</p> <p>5 SOP under suspicious order monitoring."</p> <p>6 Correct?</p> <p>7 A. That's what it states.</p> <p>8 Q. Okay. Is it true at this</p> <p>9 time, August 23, 2010, that you were</p> <p>10 working with these people to try to get a</p> <p>11 suspicious order monitoring SOP together?</p> <p>12 MS. MILLER: Objection.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. A written one?</p> <p>15 A. You know, I just -- again, I</p> <p>16 can't recall the exact dates, you know,</p> <p>17 around SOP. I know there were, you know,</p> <p>18 drafts being worked on. But I -- I also</p> <p>19 know that there was -- there was an</p> <p>20 ongoing SO -- there was an ongoing SOM</p> <p>21 process taking place.</p> <p>22 Q. Okay. It says, "We promised</p> <p>23 this to the DEA by Wednesday."</p> <p>24 Now, you're talking about</p>	<p style="text-align: right;">Page 109</p> <p>1 MS. MILLER: Give me a</p> <p>2 chance to object. Objection.</p> <p>3 THE WITNESS: I just -- I</p> <p>4 don't recall that.</p> <p>5 BY MR. BAKER:</p> <p>6 Q. Was it your intent to try to</p> <p>7 show it to the DEA as being in existence</p> <p>8 as a policy and procedure of CVS while</p> <p>9 they were at the Indiana facility doing</p> <p>10 an inspection in August 25 of 2010?</p> <p>11 MS. MILLER: Objection.</p> <p>12 THE WITNESS: I don't -- I</p> <p>13 don't recall a particular</p> <p>14 instance.</p> <p>15 MR. BAKER: Could you pull</p> <p>16 Number 70, please.</p> <p>17 (Document marked for</p> <p>18 identification as Exhibit</p> <p>19 CVS-Devlin-P-70.)</p> <p>20 BY MR. BAKER:</p> <p>21 Q. I'm showing you an e-mail</p> <p>22 dated August 25, 2010, from Henry</p> <p>23 Mortelliti to Greg Brantley copied to</p> <p>24 Francis Devlin. That's you, Frank</p>

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<p>1 Devlin, correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Dated 8/25/2010.</p> <p>4 It's called, "Controlled drug IRR Draft 3</p> <p>5 document."</p> <p>6 Is that what it's called?</p> <p>7 A. That's what it states, yes.</p> <p>8 Q. And it says, this -- "Greg,</p> <p>9 this needs to be implemented as soon as</p> <p>10 possible in your area." Is that right?</p> <p>11 A. That's what the e-mail</p> <p>12 states, yes.</p> <p>13 Q. Okay. And it's referencing</p> <p>14 the control drug IRR, which is the item</p> <p>15 review report, correct?</p> <p>16 MS. MILLER: Objection.</p> <p>17 BY MR. BAKER:</p> <p>18 Q. Is that what it's</p> <p>19 referencing?</p> <p>20 A. I'm not seeing -- oh, in the</p> <p>21 subject line?</p> <p>22 Q. Yes. Attachment, control</p> <p>23 drug IRR?</p> <p>24 A. IRR SOP. That's what it</p>	<p>1 this requirement."</p> <p>2 Is that what it says?</p> <p>3 A. That is what it states, yes.</p> <p>4 Q. Okay. And it talks about</p> <p>5 the item review report under</p> <p>6 Subparagraph B. If you go down, it says,</p> <p>7 "Items reviewed. CVS has established the</p> <p>8 control drug order thresholds which will</p> <p>9 flag on the IRR, item review report, as</p> <p>10 well as field loss prevention NovaStar</p> <p>11 loss prevention software reports"; is</p> <p>12 that correct?</p> <p>13 A. Where -- where are you now?</p> <p>14 Q. If you look at your screen,</p> <p>15 it's right --</p> <p>16 A. I'm having trouble reading</p> <p>17 the screen.</p> <p>18 Q. Okay.</p> <p>19 MS. MILLER: Bill, it's</p> <p>20 easier for him to work off of the</p> <p>21 hardcopy --</p> <p>22 BY MR. BAKER:</p> <p>23 Q. I'm under Paragraph B,</p> <p>24 Paragraph B?</p>
<p>1 states, yes.</p> <p>2 Q. Do you see that?</p> <p>3 A. I do see that.</p> <p>4 Q. Okay. Look at the</p> <p>5 attachment. It says, "Control drug</p> <p>6 IRR" -- control drug inventory review</p> <p>7 report policy, prevention and monitoring</p> <p>8 of control drug suspicious orders.</p> <p>9 A. It's on the second page?</p> <p>10 Q. Yes, sir.</p> <p>11 A. Yes.</p> <p>12 Q. Okay. Under general. Bold</p> <p>13 all that paragraph. Highlight it. It</p> <p>14 says, "DEA regulations require that all</p> <p>15 distributors must design a system to</p> <p>16 monitor, detect and report any suspicious</p> <p>17 control drug orders. Suspicious orders</p> <p>18 are those involving an extraordinary</p> <p>19 quantity, an uncommon method of payment</p> <p>20 or delivery, or any other circumstances</p> <p>21 that may indicate that the control drug</p> <p>22 will be used in violation of the law.</p> <p>23 All CVS distribution centers, DCs, must</p> <p>24 follow these procedures to comply with</p>	<p>1 A. B as-in-boy?</p> <p>2 Q. Yes.</p> <p>3 A. Okay.</p> <p>4 Q. Do you see it, items</p> <p>5 reviewed?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Did I quote that</p> <p>8 correctly?</p> <p>9 "CVS has established control</p> <p>10 drug order thresholds which will flag on</p> <p>11 the IRR."</p> <p>12 A. Yes.</p> <p>13 Q. "As well as field loss</p> <p>14 prevention NovaStar reports"; is that</p> <p>15 correct?</p> <p>16 A. Yes.</p> <p>17 Q. It says, "These thresholds</p> <p>18 are the primary tool to prevent stores</p> <p>19 from purchasing excessive or potentially</p> <p>20 suspicious control drug orders," correct?</p> <p>21 A. That's what it states.</p> <p>22 Q. It says, "These thresholds</p> <p>23 are based on historic trends of sales,"</p> <p>24 correct?</p>

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<p>1       A. That's what it states.</p> <p>2       Q. It says, "Stores may order</p> <p>3 more than the historical average;</p> <p>4 however, the DC may not ship amounts that</p> <p>5 exceed these thresholds if it is believed</p> <p>6 to be suspicious," correct?</p> <p>7       A. That's what it states.</p> <p>8       Q. All right. And this was the</p> <p>9 control drug IRR policy that's being</p> <p>10 referred to in this e-mail as being in</p> <p>11 need of being implemented as soon as</p> <p>12 possible in your area, correct?</p> <p>13      A. Yeah, again, I -- before we</p> <p>14 believed this activity was taking place,</p> <p>15 it was more of a finalizing an SOP.</p> <p>16      Q. Okay. So let's go to</p> <p>17 Exhibit Number 97.</p> <p>18      (Document marked for</p> <p>19 identification as Exhibit</p> <p>20 CVS-Devlin-P-97.)</p> <p>21 BY MR. BAKER:</p> <p>22      Q. All right. Exhibit</p> <p>23 Number 97 is the DEA SOP 8/25 of 2010 in</p> <p>24 an e-mail from Amy Propatier on the cover</p>	<p>1       A. I remember reading that,</p> <p>2 yes.</p> <p>3       Q. Okay. So now, we are on</p> <p>4 8/26, and it says, "Could you please</p> <p>5 post? We added the suspicious order</p> <p>6 monitoring."</p> <p>7       Do you see that?</p> <p>8       A. I don't see 8/26.</p> <p>9       Q. Okay. Look -- look.</p> <p>10      Actually do you see -- actually</p> <p>11 8/25/2010. Do you see that?</p> <p>12      A. I do see 8/25.</p> <p>13      Q. All right. This is sent on</p> <p>14 8/26/2010. Do you see that?</p> <p>15      A. Okay. Yes.</p> <p>16      Q. Okay. It says, "Can you</p> <p>17 please post? We added the suspicious</p> <p>18 order monitoring."</p> <p>19       Do you see that?</p> <p>20      A. I do see that.</p> <p>21      Q. Okay. Is this the first</p> <p>22 time that the suspicious order monitoring</p> <p>23 was added to the SOP at CVS?</p> <p>24      MS. MILLER: Objection.</p>
<p>1 of that. It's dated 8/26/2010; is that</p> <p>2 correct?</p> <p>3       A. Excuse me. Yes, that's what</p> <p>4 it states.</p> <p>5       Q. Okay. So it says from Amy</p> <p>6 Propatier to Annette Lamoureux. Do you</p> <p>7 know who Annette Lamoureux was?</p> <p>8       A. I believe she worked in the</p> <p>9 Woonsocket distribution center.</p> <p>10      Q. Okay. And Amy Propatier</p> <p>11 also worked in the Woonsocket</p> <p>12 distribution center; is that correct?</p> <p>13      MS. MILLER: Objection.</p> <p>14 BY MR. BAKER:</p> <p>15      Q. Corporate office.</p> <p>16       She worked in the corporate</p> <p>17 office; is that correct?</p> <p>18      A. She worked in the corporate</p> <p>19 office, yes.</p> <p>20      Q. Okay. So according to this</p> <p>21 e-mail as a follow-up to the one that was</p> <p>22 8/23, remember that one? "I'm trying to</p> <p>23 get this inserted by Wednesday."</p> <p>24      Do you remember that?</p>	<p>1       BY MR. BAKER:</p> <p>2       Q. Is this the first time that</p> <p>3 the suspicious order monitoring policy</p> <p>4 and procedure in its completed form was</p> <p>5 added to the -- the standard operating</p> <p>6 procedure manual at CVS?</p> <p>7       A. Based on the e-mail that</p> <p>8 appears to be so. But again, I'm very</p> <p>9 confident that the -- there was a process</p> <p>10 that was taking place.</p> <p>11      Q. You are confident that there</p> <p>12 was a process taking place.</p> <p>13      A. I know there was.</p> <p>14      Q. Okay. Let me -- let me talk</p> <p>15 about that. There was no written policy</p> <p>16 and procedure with respect to suspicious</p> <p>17 order monitoring before 8/25 of 2010,</p> <p>18 according to the documentation that I've</p> <p>19 shown you today, correct?</p> <p>20      MS. MILLER: Objection.</p> <p>21 BY MR. BAKER:</p> <p>22      Q. Correct?</p> <p>23      A. Again, I -- I can't recall</p> <p>24 on the documentation which I have not</p>

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<p>1 read through. That's based on the      2 documentation and not having read through      3 it and the dates, again I don't know the      4 exact date that it was actually put in      5 the SOP.</p> <p>6 Q. Well, it says it right here,      7 Mr. Devlin. I mean it says, "Could you      8 please post, we added the SOM." It's      9 dated 8/25/2010. And you have Amy      10 Propatier sending the e-mail 8/26/10. Is      11 that not clear as crystal to you?</p> <p>12 A. I under --</p> <p>13 MS. MILLER: Objection.</p> <p>14 THE WITNESS: I understand      15 that based on the e-mail.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. Okay. Based upon the      18 e-mail, based upon the documentation,      19 based upon the exhibits that I've shown      20 you today, is it true that, to your      21 knowledge, that's the first time that CVS      22 inserted a suspicious order monitoring      23 policy and procedure into their standard      24 operating procedure, yes or no?</p>	<p>1 MS. MILLER: Bill, you mean      2 97?</p> <p>3 BY MR. BAKER:</p> <p>4 Q. Excuse me. We're back on      5 the record and looking at Exhibit 97,      6 which was the 8/25/10 control drug DEA      7 standard operating procedures manual at      8 CVS distribution center, correct?</p> <p>9 A. Yes.</p> <p>10 Q. I want you to turn to page,      11 Roman Numeral VII-7. And it talks about      12 the item review report, Paragraph Number      13 4. Do you see here? The item review      14 report?</p> <p>15 MS. MILLER: Do you mean      16 Roman Numeral VIII-7?</p> <p>17 BY MR. BAKER:</p> <p>18 Q. Right. Roman Numeral      19 VIII-7, Numeral 4, item review report?</p> <p>20 Do you see that?</p> <p>21 A. I do.</p> <p>22 Q. It says, "Currently the item      23 review report for control drugs is being      24 reviewed at a central location in New</p>
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<p>1 MS. MILLER: Objection.      2 Asked and answered.</p> <p>3 THE WITNESS: Again, on the      4 e-mails that you're showing me,      5 you could state that. Again, I      6 just -- I can't recall if that is      7 in fact the date.</p> <p>8 MR. BAKER: Okay. I've been      9 going about an hour and a half      10 myself. And I have not taken a      11 break. So I'm going to take about      12 a five-minute break.</p> <p>13 THE VIDEOGRAPHER: We're      14 going off the record. The time is      15 10:09.</p> <p>16 (Short break.)</p> <p>17 THE VIDEOGRAPHER: We are      18 going back on record. Beginning      19 of Media File 3. The time is      20 10:20.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Okay. We're back on the      23 record looking at Exhibit Number 87,      24 which was the --</p>	<p>1 Jersey." Is that correct?</p> <p>2 A. That's what it states.</p> <p>3 Q. Okay. That's where Frank      4 Mortelliti was located, correct?</p> <p>5 A. No.</p> <p>6 Q. Where was -- that's where --</p> <p>7 who was Mortelliti? What's his first      8 name?</p> <p>9 A. His name is John.</p> <p>10 Q. John Mortelliti. Okay.</p> <p>11 You're Frank Devlin. That's where John      12 Mortelliti was located, correct?</p> <p>13 A. Correct.</p> <p>14 Q. Was he the one doing the      15 item review report review at that time?</p> <p>16 A. John was definitely involved      17 in the item review report. As far as      18 exact time frames and whatnot, I -- I      19 can't recall.</p> <p>20 Q. Okay. If this says that      21 that's what he was doing, do you have any      22 reason to doubt that this is accurate,      23 8/25 of 2010?</p> <p>24 MS. MILLER: Objection.</p>

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<p>1 BY MR. BAKER:</p> <p>2 Q. She objected. So let's look</p> <p>3 at the page. Look at the first page of</p> <p>4 this. It's 8/25/10. That's the date on</p> <p>5 this SOP; is that correct?</p> <p>6 A. That is correct.</p> <p>7 Q. Okay. And inside this SOP</p> <p>8 that's dated 8/25/10, did I read this</p> <p>9 correctly? "Currently the item review</p> <p>10 report for controlled drugs is being</p> <p>11 reviewed in a central location in New</p> <p>12 Jersey."</p> <p>13 Did I read that correct?</p> <p>14 A. You read that correctly.</p> <p>15 Q. Okay. And was</p> <p>16 Mr. Mortelliti the one that was doing</p> <p>17 that item review report in New Jersey?</p> <p>18 A. Based on this document, yes.</p> <p>19 Q. Okay. And do you have any</p> <p>20 reason to doubt that this document is</p> <p>21 accurate?</p> <p>22 A. No. I'm not doubting the</p> <p>23 accuracy of the document. Again, I</p> <p>24 just -- I can't recall the exact time</p>	<p>1 Q. It says, "The director of</p> <p>2 logistics, loss prevention, will be the</p> <p>3 only representative of CVS contacting the</p> <p>4 DEA." Correct?</p> <p>5 A. That's what it states.</p> <p>6 Q. Okay. Now, you were in a</p> <p>7 position of authority at CVS with respect</p> <p>8 to being the liaison or the contact</p> <p>9 person between CVS and the DEA according</p> <p>10 to this SOP; is that correct?</p> <p>11 A. Yes.</p> <p>12 Q. Okay.</p> <p>13 A. From an SOP standpoint and</p> <p>14 I -- I would have other people involved</p> <p>15 also.</p> <p>16 Q. Okay. But in terms of</p> <p>17 having direct contact with the DEA, this</p> <p>18 SOP lists you as the only representative</p> <p>19 of CVS that shall contact the DEA -- DEA,</p> <p>20 correct?</p> <p>21 A. That's what this version</p> <p>22 states. I mean, the process did -- did</p> <p>23 evolve. And again, I can't recall the</p> <p>24 dates. But I did get other people</p>
<p>1 frames he was reviewing and not</p> <p>2 reviewing.</p> <p>3 Q. Was he doing this by himself</p> <p>4 in New Jersey, to your knowledge?</p> <p>5 MS. MILLER: Objection.</p> <p>6 BY MR. BAKER:</p> <p>7 Q. Let me restate the question.</p> <p>8 Who, if anybody, was assisting</p> <p>9 Mr. Mortelliti in New Jersey with respect</p> <p>10 to this item review report?</p> <p>11 A. I know Mr. Mortelliti was</p> <p>12 involved in the process. And he may have</p> <p>13 had, you know, one of his supervisors</p> <p>14 working for him involved. But I just --</p> <p>15 I can't say for sure.</p> <p>16 Q. All right. Turn to the next</p> <p>17 page. Under Paragraph 7, reports to the</p> <p>18 DEA, it says, "All investigations</p> <p>19 resulting in a confirmed suspicious order</p> <p>20 must be reported to the director of</p> <p>21 logistics, loss prevention, Frank</p> <p>22 Devlin."</p> <p>23 That's you, correct?</p> <p>24 A. Correct.</p>	<p>1 involved in contacting the DEA.</p> <p>2 Q. Okay.</p> <p>3 A. But I would -- I would be</p> <p>4 aware of it.</p> <p>5 Q. All right. With respect to</p> <p>6 this item review report that was being</p> <p>7 reviewed by Mr. Mortelliti in Lumberton,</p> <p>8 New Jersey, was he reviewing the totality</p> <p>9 of all item review reports for all CVS</p> <p>10 distribution centers throughout the</p> <p>11 United States?</p> <p>12 A. Again, I can't recall exact</p> <p>13 times, but there were periods of time,</p> <p>14 that, yes, that would be the case.</p> <p>15 Q. Okay. And when he was doing</p> <p>16 that, was he reviewing the item review</p> <p>17 reports that pertained to control drugs</p> <p>18 being supplied out of the distribution</p> <p>19 centers to CVS pharmacies?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Would that include</p> <p>22 narcotics that we talked about,</p> <p>23 hydrocodone combination products?</p> <p>24 MS. MILLER: Objection.</p>

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<p>1        THE WITNESS: Yes, I believe      2        at that time hydrocodone products      3        were -- would have been involved,      4        yes.</p> <p>5 BY MR. BAKER:</p> <p>6        Q. Okay. You know hydrocodone      7 combination products are narcotics. I      8 showed you the drug fact sheets on that,      9 correct?</p> <p>10      MS. MILLER: Objection.</p> <p>11 BY MR. BAKER:</p> <p>12      Q. You know that, don't you?</p> <p>13      MS. MILLER: Objection.</p> <p>14      THE WITNESS: After reading      15 the -- you know, according to that      16 fact sheet, that's what it's      17 classified as.</p> <p>18 BY MR. BAKER:</p> <p>19      Q. And you know they're      20 opioids, correct?</p> <p>21      MS. MILLER: Objection.</p> <p>22      THE WITNESS: I mean --</p> <p>23 BY MR. BAKER:</p> <p>24      Q. I mean, that's what it said.</p>	<p>1        questions and get direct answers. But      2 every time I ask you a question, you kind      3 of, well, I don't remember, this, that.      4 I just want to know what the facts are.      5 Okay. And I don't want to dance around      6 with you with questions and answers. I      7 just want to know the facts. Okay. And      8 I'm not trying to ask you trick      9 questions.</p> <p>10      So if you can answer my      11 questions directly, we can get through      12 this much smoother than what you're      13 allowing. Okay?</p> <p>14      MS. MILLER: Bill, he's      15 answering your questions.</p> <p>16 BY MR. BAKER:</p> <p>17      Q. So let me -- let me repeat      18 the question. Let's go back.</p> <p>19      A. My -- my intention is to      20 answer your question, sir.</p> <p>21      Q. Okay. You know, you know      22 that hydrocodone combination products are      23 opioids, correct?</p> <p>24      MS. MILLER: Objection.</p>
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<p>1        You just read it.</p> <p>2        MS. MILLER: Objection.</p> <p>3        THE WITNESS: Well, again,      4 according to the sheet you sent      5 me, yes.</p> <p>6 BY MR. BAKER:</p> <p>7        Q. Well, listen, what color is      8 that pen right there?</p> <p>9        MS. MILLER: Objection.</p> <p>10 BY MR. BAKER:</p> <p>11      Q. What color is it?</p> <p>12      MS. MILLER: Objection.</p> <p>13      THE WITNESS: You're not      14 going to buy this, but I am      15 color-blind.</p> <p>16 BY MR. BAKER:</p> <p>17      Q. Okay. Well, what's in this      18 glass right here?</p> <p>19      MS. MILLER: Objection.</p> <p>20 BY MR. BAKER:</p> <p>21      Q. Does it look like water?</p> <p>22      MS. MILLER: Mr. Baker.</p> <p>23 BY MR. BAKER:</p> <p>24      Q. See, I want to ask direct</p>	<p>1        Asked and answered.</p> <p>2        THE WITNESS: According to      3 the sheet you provided me, that's      4 what it states.</p> <p>5 BY MR. BAKER:</p> <p>6        Q. Okay. Did you know that a      7 hydrocodone combination product was an      8 opioid when you worked at CVS?</p> <p>9        A. I -- as I previously      10 testified, I would refer to it as a      11 control drug.</p> <p>12      Q. Okay. Did you know it was      13 an opioid?</p> <p>14      A. No.</p> <p>15      Q. Okay. When Mr. Mortelliti      16 was in Lumberton, New Jersey, reviewing      17 these item review reports, how many      18 pharmacies was he reviewing them for?</p> <p>19      MS. MILLER: Objection.</p> <p>20      THE WITNESS: It would be      21 based on from when John was      22 reviewing it, based on how many      23 pharmacies were operating at that      24 time.</p>

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<p>1 BY MR. BAKER:</p> <p>2 Q. Approximately how many</p> <p>3 pharmacies were operating in August of</p> <p>4 2010 to the best of your recollection,</p> <p>5 how many CVS pharmacies were in operation</p> <p>6 at that time?</p> <p>7 A. I think there could have</p> <p>8 been maybe eight or nine.</p> <p>9 Q. That's distribution centers.</p> <p>10 A. I'm sorry, can you repeat</p> <p>11 the question?</p> <p>12 Q. Okay. There might have been</p> <p>13 eight or nine distribution centers; is</p> <p>14 that right?</p> <p>15 A. I'm sorry, I thought that's</p> <p>16 what you were asking me.</p> <p>17 Q. Okay. So let's ask that.</p> <p>18 How many distribution centers were in</p> <p>19 operation at that time that distributed</p> <p>20 control drugs from CVS distribution</p> <p>21 centers to CVS pharmacies?</p> <p>22 A. It may have been around</p> <p>23 eight or nine distribution centers.</p> <p>24 Q. Okay. And those eight or</p>	<p>1 BY MR. BAKER:</p> <p>2 Q. All right. She objected, so</p> <p>3 I'm going to have to restate the question</p> <p>4 until that stops. Okay?</p> <p>5 A. Sure.</p> <p>6 Q. So what was your involvement</p> <p>7 with suspicious order monitoring with</p> <p>8 respect to logistics loss prevention in</p> <p>9 your position at that time?</p> <p>10 A. I was involved in -- I was</p> <p>11 involved in the suspicious order</p> <p>12 monitoring process, and I'd say, you</p> <p>13 know, more from an almost program manager</p> <p>14 standpoint.</p> <p>15 Q. Okay.</p> <p>16 A. Ensuring that, you know,</p> <p>17 the -- the process was taking place and</p> <p>18 we were -- we had an ongoing process in</p> <p>19 place.</p> <p>20 Q. Okay. And over</p> <p>21 approximately -- using your best estimate</p> <p>22 in that position, approximately how many</p> <p>23 CVS pharmacies were these distribution</p> <p>24 centers distributing to throughout the</p>
<p>1 nine distribution centers, to how many</p> <p>2 total approximate CVS pharmacies did they</p> <p>3 distribute Schedule III controlled</p> <p>4 substances?</p> <p>5 A. Again, I would have to look</p> <p>6 at a store count, because, you know, CVS</p> <p>7 over the years had, you know,</p> <p>8 acquisitions and mergers, and so maybe in</p> <p>9 2010 there was around 4,000. Best guess.</p> <p>10 I'm not sure on that.</p> <p>11 Q. Okay. Based upon your</p> <p>12 knowledge without guessing, would 4,000</p> <p>13 be about an accurate estimate?</p> <p>14 MS. MILLER: Objection.</p> <p>15 THE WITNESS: I would say it</p> <p>16 could be in the ballpark.</p> <p>17 BY MR. BAKER:</p> <p>18 Q. Okay. And that's because</p> <p>19 you were director of loss prevention</p> <p>20 logistics and you were involved in the</p> <p>21 suspicious order monitoring process; is</p> <p>22 that right?</p> <p>23 MS. MILLER: Objection.</p> <p>24 THE WITNESS: I was --</p>	<p>1 United States at that time in August of</p> <p>2 2010 approximately?</p> <p>3 A. Again, I gave a ballpark</p> <p>4 number of maybe around 4,000.</p> <p>5 Q. Okay. And was</p> <p>6 Mr. Mortelliti doing the reviews for the</p> <p>7 supply of opioids from those distribution</p> <p>8 centers to those pharmacies?</p> <p>9 MS. MILLER: Objection.</p> <p>10 THE WITNESS: You know,</p> <p>11 again during that time frame,</p> <p>12 that's not the terminology I -- I</p> <p>13 would use. I would use control</p> <p>14 drugs.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. Okay. Let's use your</p> <p>17 terminology. Was Mr. Mortelliti doing</p> <p>18 the item review reports -- was he</p> <p>19 reviewing the item review reports on</p> <p>20 behalf of CVS for all of the distribution</p> <p>21 of controlled substances out of CVS</p> <p>22 distribution centers to CVS pharmacies</p> <p>23 nationwide?</p> <p>24 A. There were various points in</p>

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<p>1 times, yes, he was doing that.</p> <p>2 Q. Okay. And when he was doing</p> <p>3 it, how many item review reports was he</p> <p>4 reviewing per day on average?</p> <p>5 MS. MILLER: Objection.</p> <p>6 THE WITNESS: I can't</p> <p>7 recall.</p> <p>8 BY MR. BAKER:</p> <p>9 Q. When he was doing that, how</p> <p>10 much time was he spending reviewing the</p> <p>11 item review reports per day for all of</p> <p>12 those distribution centers' transactions</p> <p>13 with respect to controlled substances</p> <p>14 from the distribution centers to the CVS</p> <p>15 pharmacies nationwide?</p> <p>16 A. I can't recall a specific</p> <p>17 amount of time. But I -- I know a -- I</p> <p>18 know there was a significant amount of</p> <p>19 his day was spent doing that.</p> <p>20 Q. And do you know how much</p> <p>21 time he spent reviewing each item review</p> <p>22 report on each transaction of controlled</p> <p>23 substances that was generated from a CVS</p> <p>24 distribution center to a CVS pharmacy?</p>	<p>1 program. And again, I can't recall exact</p> <p>2 dates, but I do recall, you know,</p> <p>3 initially, from a central standpoint, and</p> <p>4 I recall looking at having individual</p> <p>5 distribution centers doing it, and then</p> <p>6 maybe more going back to a centralized</p> <p>7 process.</p> <p>8 Q. Okay. At first it was</p> <p>9 centralized in Lumberton, New Jersey,</p> <p>10 according to this document; is that</p> <p>11 correct?</p> <p>12 A. That's what the document</p> <p>13 states, yes.</p> <p>14 Q. Okay. And when -- when you</p> <p>15 had -- when you were involved with</p> <p>16 knowing that this SOM was inserted into</p> <p>17 this SOP 8/25/10, were there some DEA</p> <p>18 talking points developed?</p> <p>19 MS. MILLER: Objection.</p> <p>20 THE WITNESS: I don't</p> <p>21 recall.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Do you -- do you recall</p> <p>24 whether or not you were involved with</p>
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<p>1 A. I do not.</p> <p>2 Q. At the time of the initial</p> <p>3 rollout of these -- this policy, was it</p> <p>4 your intent to do this on a DC,</p> <p>5 distribution center to distribution</p> <p>6 center basis, or was it intent -- was it</p> <p>7 your intent to have it all centralized</p> <p>8 into one location?</p> <p>9 MS. MILLER: Objection.</p> <p>10 BY MR. BAKER:</p> <p>11 Q. There was an objection.</p> <p>12 What was your intent with</p> <p>13 respect to how the suspicious order</p> <p>14 monitoring IRR review was to be done with</p> <p>15 respect to whether it, on the one hand,</p> <p>16 could be done centrally in one location</p> <p>17 as opposed to, on the other hand, be done</p> <p>18 in various distribution centers?</p> <p>19 A. Are you asking a specific</p> <p>20 time or?</p> <p>21 Q. Yes. In 2010 when this</p> <p>22 rolled out.</p> <p>23 A. You know, I think the -- the</p> <p>24 program itself, it was an evolving</p>	<p>1 helping develop DEA talking points with</p> <p>2 respect to this SOM that was inserted</p> <p>3 into the SOP 8/25/10?</p> <p>4 A. Yeah, I'm not sure what</p> <p>5 you're referencing as far as DEA talking</p> <p>6 points.</p> <p>7 Q. Okay.</p> <p>8 MR. BAKER: We'll take just</p> <p>9 a short break while I pull that.</p> <p>10 Let's go back on the record.</p> <p>11 (Document marked for</p> <p>12 identification as Exhibit</p> <p>13 CVS-Devlin-P-81.)</p> <p>14 BY MR. BAKER:</p> <p>15 Q. Let me show you Exhibit</p> <p>16 Number 81.</p> <p>17 Okay. You see this e-mail</p> <p>18 on Exhibit 81 that's dated September 1,</p> <p>19 2010, from John Mortelliti to various</p> <p>20 people within CVS. Do you see that?</p> <p>21 A. I do see that.</p> <p>22 Q. All right. Do you see where</p> <p>23 it talks about DEA talking points as</p> <p>24 being the subject?</p>

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<p>1        A. DEA speaking points, yes.</p> <p>2        Q. Okay. And it says, "Team,</p> <p>3 these are the final approved speaking</p> <p>4 points for the DEA agents if they come to</p> <p>5 one of your facilities and question</p> <p>6 suspicious monitoring. It is okay to</p> <p>7 share this document. Please be sure your</p> <p>8 team understands it before presenting it</p> <p>9 so it doesn't look like a prop instead of</p> <p>10 a tool."</p> <p>11        Is that what that says?</p> <p>12        A. That's what the e-mail</p> <p>13 states, yes.</p> <p>14        Q. Okay. And within the DEA</p> <p>15 talking points, if you go to, about the</p> <p>16 sixth or seventh page in at the bottom,</p> <p>17 it says --</p> <p>18        MS. MILLER: What's the</p> <p>19 Bates number?</p> <p>20        MR. BAKER: The Bates is</p> <p>21 75306. If you'll rotate that.</p> <p>22 BY MR. BAKER:</p> <p>23        Q. It's on your screen. Do you</p> <p>24 see that?</p>	<p>1 different names of the different CVS</p> <p>2 entities that were listed as owners of</p> <p>3 these distribution centers, did you see</p> <p>4 that?</p> <p>5        A. Yes, sir.</p> <p>6        Q. Okay. Who and what -- let</p> <p>7 me -- let me ask you this.</p> <p>8        Who decided within CVS that</p> <p>9 this would be a distribution center to</p> <p>10 distribution center operated system as</p> <p>11 opposed to a centralized system at the</p> <p>12 time it was rolled out, this SOM/SOP was</p> <p>13 rolled out 8/25/2010?</p> <p>14        MS. MILLER: Objection.</p> <p>15        THE WITNESS: I can't recall</p> <p>16 particulars, but it -- you know,</p> <p>17 it -- probably would have been</p> <p>18 discussions amongst -- I'm sure I</p> <p>19 was included. Probably with John</p> <p>20 Mortelliti.</p> <p>21        But again, I'm just -- I</p> <p>22 can't recall exact conversations.</p> <p>23 You know, probably soliciting some</p> <p>24 input by them, getting into more</p>
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<p>1        A. 75306. I do see that.</p> <p>2        Q. It says, "Responsibilities.</p> <p>3 DC Rx." What is a DC Rx?</p> <p>4        A. I believe that would be DC</p> <p>5 pharmacy.</p> <p>6        Q. Okay. "Review report, IRR,</p> <p>7 daily and determine whether variances are</p> <p>8 within acceptable ranges," correct?</p> <p>9        A. That's what it states.</p> <p>10       Q. Okay. And then it says</p> <p>11 on -- go two pages further, or three</p> <p>12 pages further, at 75309. Under FAQ. It</p> <p>13 says, "why is the DC responsible to</p> <p>14 review suspicious orders?"</p> <p>15       Do you see that?</p> <p>16       A. I do.</p> <p>17       Q. Okay. It says, "The DC, as</p> <p>18 a separate DEA registrant, is responsible</p> <p>19 for products shipped from the facility.</p> <p>20 DEA regulations require all distributors</p> <p>21 to report suspicious orders," correct?</p> <p>22       A. That's what it states, yes.</p> <p>23       Q. Now, you saw that document</p> <p>24 that I presented to you that showed the</p>	<p>1 theorizing.</p> <p>2        But, you know, as far as</p> <p>3 actually remembering, I don't.</p> <p>4        You know, from what I</p> <p>5 recall, you know, as the process</p> <p>6 evolved, you know, it's -- you</p> <p>7 know, we looked at centralization,</p> <p>8 we looked at individualization.</p> <p>9 BY MR. BAKER:</p> <p>10       Q. Okay. With respect to that,</p> <p>11 when it was first rolled out and</p> <p>12 centralized in Lumberton, New Jersey, at</p> <p>13 what point was it then transferred to a</p> <p>14 DC-to-DC basis, if at all?</p> <p>15       A. I just -- I know at one</p> <p>16 point it was. I just -- I can't recall</p> <p>17 the date.</p> <p>18       MR. BAKER: Hold on. Let me</p> <p>19 take a quick break. I need to</p> <p>20 pull those documents if you can't</p> <p>21 recall. I'll be --</p> <p>22       THE VIDEOGRAPHER: We're</p> <p>23 going off the record. The time is</p> <p>24 10:39.</p>

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<p>1                   (Short break.)</p> <p>2                   THE VIDEOGRAPHER: We are</p> <p>3                   going back on record. Beginning</p> <p>4                   of Media File Number 4. The time</p> <p>5                   is 10:44.</p> <p>6 BY MR. BAKER:</p> <p>7                   Q. Okay. Mr. Devlin, when you</p> <p>8                   were at CVS in 2010, August, we talked</p> <p>9                   about Mr. Mortelliti doing the IR reviews</p> <p>10                  out of Lumberton, New Jersey initially,</p> <p>11                  correct?</p> <p>12                  A. We did discuss that, yes.</p> <p>13                  Q. Okay. And at that point</p> <p>14                  this was not a</p> <p>15                  distribution-to-distribution center</p> <p>16                  operation. It was out of one</p> <p>17                  distribution center in Lumberton, New</p> <p>18                  Jersey. Is that accurate or not?</p> <p>19                  A. Yeah. And again, I didn't</p> <p>20                  recall the dates. But I know we kind</p> <p>21                  of -- we had central. We had</p> <p>22                  distribution, central, so...</p> <p>23                  Q. And we went over the DEA</p> <p>24                  talking points that showed that the</p>	<p>1 from looking at the documentation, what</p> <p>2 is your understanding as to what the</p> <p>3 intent was of CVS insofar as this being</p> <p>4 either a centralized versus a</p> <p>5 distribution center by distribution</p> <p>6 center operation?</p> <p>7 MS. MILLER: Objection.</p> <p>8 THE WITNESS: According --</p> <p>9 MS. MILLER: You may answer.</p> <p>10 Go ahead.</p> <p>11 MR. BAKER: Well, she</p> <p>12 objected so I'm going to keep</p> <p>13 doing it until I get it clean.</p> <p>14 Okay.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. So what was the purpose of</p> <p>17 that being in -- the distribution to</p> <p>18 distribution center IRR program versus --</p> <p>19 in the DEA talking points versus it being</p> <p>20 a centralized location?</p> <p>21 MS. MILLER: Objection.</p> <p>22 MR. BAKER: She objected</p> <p>23 again.</p> <p>24 BY MR. BAKER:</p>
<p>1 intent was to make this a distribution</p> <p>2 center-oriented program, not a</p> <p>3 centralized one, right?</p> <p>4 MS. MILLER: Objection.</p> <p>5 BY MR. BAKER:</p> <p>6 Q. Is that accurate or not?</p> <p>7 MS. MILLER: Objection.</p> <p>8 THE WITNESS: Well,</p> <p>9 according to the --</p> <p>10 BY MR. BAKER:</p> <p>11 Q. Wait a minute, because she</p> <p>12 objected. So I've got to re-ask the</p> <p>13 question until that stops. Okay.</p> <p>14 According to the document --</p> <p>15 MS. MILLER: I have a right</p> <p>16 to object.</p> <p>17 MR. BAKER: No, she does.</p> <p>18 But I want to make sure we get it</p> <p>19 right.</p> <p>20 MS. MILLER: I want to make</p> <p>21 sure he's aware that I have a</p> <p>22 right to object.</p> <p>23 BY MR. BAKER:</p> <p>24 Q. Okay. So you understand</p>	<p>1 Q. What does the -- what does</p> <p>2 the document that you looked at show as</p> <p>3 to what the DEA talking points say about</p> <p>4 the IRR program being a centralized</p> <p>5 versus a DC-to-DC-operated program? What</p> <p>6 does it say?</p> <p>7 A. I lost the page. What page</p> <p>8 are we on?</p> <p>9 Q. We just reviewed it. Did it</p> <p>10 say that it was going to be a</p> <p>11 distribution center-related program or</p> <p>12 that it was going to be a centralized</p> <p>13 program?</p> <p>14 A. It was referencing a</p> <p>15 distribution center being involved.</p> <p>16 Q. Okay. What was the thought</p> <p>17 process behind that so far as your</p> <p>18 involvement?</p> <p>19 A. I think we were just</p> <p>20 discussing from an efficiency standpoint,</p> <p>21 operational standpoint, what made the</p> <p>22 most sense as far as how we had the</p> <p>23 program in place.</p> <p>24 Q. And how many different</p>

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<p> <sup>1</sup> people were going to have to be at the  <sup>2</sup> distribution centers to do that if it was  <sup>3</sup> a distribution center-related program  <sup>4</sup> versus a centralized program?  <sup>5</sup>       A. I believe we were looking at  <sup>6</sup> the pharmacy manager or supervisor of  <sup>7</sup> each distribution center and the loss  <sup>8</sup> prevention manager would have some  <sup>9</sup> involvement, but the majority of the  <sup>10</sup> involvement would be the pharmacy  <sup>11</sup> supervisor and the -- you know, I think  <sup>12</sup> at the time we were just looking at, you  <sup>13</sup> know, again efficiencies, and it's --  <sup>14</sup> having the pharmacy supervisor at the DC  <sup>15</sup> doing it, it would certainly, for their  <sup>16</sup> respective distribution center, it would  <sup>17</sup> take a lot less time to review than a  <sup>18</sup> centralized process. I mean it would  <sup>19</sup> take more time for a centralized process.  <sup>20</sup>       Q. Okay. And how long was it  <sup>21</sup> intended to stay -- how long did you  <sup>22</sup> intend for it to stay in a  <sup>23</sup> distribution-center-to-distribution  <sup>24</sup> center process versus a centralized     </p>	<p> <sup>1</sup> A. Yeah, I just can't recall  <sup>2</sup> the date.  <sup>3</sup>                     (Document marked for  <sup>4</sup> identification as Exhibit  <sup>5</sup> CVS-Devlin-P-143.)  <sup>6</sup> BY MR. BAKER:  <sup>7</sup>       Q. Let me show you Exhibit 143.  <sup>8</sup> This shows that it's an e-mail from  <sup>9</sup> Rachel Dingus to you, Frank Devlin. Who  <sup>10</sup> is Rachel Dingus?  <sup>11</sup>       A. I can't recall.  <sup>12</sup>       Q. Okay. Does this show that  <sup>13</sup> there was a loss prevention analyst  <sup>14</sup> position being advertised for CVS?  <sup>15</sup>       A. Just give me a moment to  <sup>16</sup> read through it. I mean, this is a job  <sup>17</sup> description.  <sup>18</sup>       Q. And it's a job description  <sup>19</sup> that's attached to an e-mail, 10/13/10,  <sup>20</sup> correct?  <sup>21</sup>       A. Correct.  <sup>22</sup>       Q. To you, right?  <sup>23</sup>       A. Correct.  <sup>24</sup>       Q. All right. And it says,     </p>
<p> <sup>1</sup> process?  <sup>2</sup>       A. I can't recall a time frame.  <sup>3</sup>       Q. Okay. When was it rolled  <sup>4</sup> out into a  <sup>5</sup> distribution-center-to-distribution-  <sup>6</sup> center process?  <sup>7</sup>       MS. MILLER: Objection.  <sup>8</sup>       Asked and answered.  <sup>9</sup> BY MR. BAKER:  <sup>10</sup>      Q. Well, we have the DEA  <sup>11</sup> talking points. Was it shortly after  <sup>12</sup> that?  <sup>13</sup>      A. I just -- I can't -- I can't  <sup>14</sup> recall the dates.  <sup>15</sup>      Q. If documentation showed that  <sup>16</sup> it was in September -- late September  <sup>17</sup> 2010, early October 2010, would that be  <sup>18</sup> consistent with your memory?  <sup>19</sup>      A. I just can't -- I can't -- I  <sup>20</sup> just can't recall.  <sup>21</sup>      Q. Okay. In October 2010, did  <sup>22</sup> you start advertising for a loss  <sup>23</sup> prevention analyst in Knoxville,  <sup>24</sup> Tennessee?     </p>	<p> <sup>1</sup> "Summary. PSE/control drug item review  <sup>2</sup> analyst," correct? Look here. That's  <sup>3</sup> what it says, right there?  <sup>4</sup>       A. Yes.  <sup>5</sup>       Q. And control drug would  <sup>6</sup> include hydrocodone combination products,  <sup>7</sup> or not?  <sup>8</sup>       A. Control drug, yes.  <sup>9</sup>       Q. Okay. And would these be  <sup>10</sup> the control drugs that would be shipped  <sup>11</sup> from the distribution centers to the  <sup>12</sup> pharmacies?  <sup>13</sup>      A. To CVS stores, yes.  <sup>14</sup>      Q. Okay. And it says, "The  <sup>15</sup> loss prevention analyst is responsible  <sup>16</sup> for maintaining an adherence to the loss  <sup>17</sup> prevention procedures, controls, and  <sup>18</sup> investigations. The loss prevention  <sup>19</sup> analyst will be responsible for daily  <sup>20</sup> reviews of pseudoephedrine control drug  <sup>21</sup> inventory review reports for ten  <sup>22</sup> full-service Rx distribution centers, as  <sup>23</sup> well as reports obtained from" -- "from  <sup>24</sup> NovaStor (Viper)."     </p>

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<p>1        Is that what it says?</p> <p>2        A. That's what it states, yes.</p> <p>3        Q. Okay. So were there ten</p> <p>4 distribution centers at the time, ten</p> <p>5 pharmacy distribution centers?</p> <p>6        A. According to this document,</p> <p>7 yes.</p> <p>8        Q. Okay. It says, "They will</p> <p>9 initiate investigations and feedback from</p> <p>10 loss prevention in the field as well as</p> <p>11 the distribution centers"; is that</p> <p>12 correct?</p> <p>13        A. That's what it states.</p> <p>14        Q. And under job description</p> <p>15 under bullet Point 4, it says, "This</p> <p>16 person will keep detailed notes on all</p> <p>17 inventory review reports as well as open</p> <p>18 cases," correct?</p> <p>19        A. That's what it states.</p> <p>20        Q. Okay. So let me ask, was</p> <p>21 there an intent in October of 2012 for</p> <p>22 you to make this a one location procedure</p> <p>23 versus a distribution center to</p> <p>24 distribution procedure?</p>	<p>1        of this document.</p> <p>2 BY MR. BAKER:</p> <p>3        Q. Well, the DEA talking points</p> <p>4 said that this was going to be a</p> <p>5 distribution-wide program, correct?</p> <p>6        A. It did, yes.</p> <p>7        Q. Okay. But then you, a month</p> <p>8 later, in October, are advertising for</p> <p>9 this to be a centralized location process</p> <p>10 in Knoxville. Why?</p> <p>11        MS. MILLER: Objection.</p> <p>12        THE WITNESS: Alls I can</p> <p>13 recall is I guess from an</p> <p>14 operational efficiency standpoint,</p> <p>15 what we felt was the best way to</p> <p>16 approach it.</p> <p>17 BY MR. BAKER:</p> <p>18        Q. How many positions -- oh, go</p> <p>19 ahead. I'm sorry. Were you finished?</p> <p>20        A. No. So I mean, this, I</p> <p>21 mean, you know, the whole suspicious</p> <p>22 order monitoring process, I mean it</p> <p>23 was -- it was a new process.</p> <p>24        Q. Okay.</p>
<p>1        A. It appears based on this</p> <p>2 document, yes.</p> <p>3        Q. Okay. Now what changed by</p> <p>4 the time those DEA talking points were</p> <p>5 developed and the time that this -- this</p> <p>6 advertisement takes place in October of</p> <p>7 2010?</p> <p>8        MS. MILLER: Objection.</p> <p>9 BY MR. BAKER:</p> <p>10        Q. What change did it cause you</p> <p>11 to change your mind as to whether this</p> <p>12 should be a distribution to</p> <p>13 distribution-type operation --</p> <p>14 distribution center to distribution</p> <p>15 center-type operation as opposed to a</p> <p>16 centralized operation?</p> <p>17        MS. MILLER: Objection.</p> <p>18 BY MR. BAKER:</p> <p>19        Q. What changed, if anything?</p> <p>20        MS. MILLER: Objection.</p> <p>21        THE WITNESS: I can't recall</p> <p>22 any change and I -- certainly I</p> <p>23 don't recall any correlation to</p> <p>24 DEA talking points in the creation</p>	<p>1        A. And we had gone into -- you</p> <p>2 know, it just continually evolved --</p> <p>3        Q. Right.</p> <p>4        A. -- over a period of time.</p> <p>5        So whether it was</p> <p>6 centralized or based in a distribution</p> <p>7 center, I certainly don't recall any,</p> <p>8 like major issue of wow, we -- we better</p> <p>9 change this. That wasn't the case at</p> <p>10 all. It was more, you know, my role as a</p> <p>11 project manager, you know, not just on</p> <p>12 SOM, but on other items, it's just -- I'm</p> <p>13 always looking for efficiency, what is --</p> <p>14 what's the best way to do this. So...</p> <p>15        Q. Okay. Now, you mentioned --</p> <p>16 you mentioned it was a new process, this</p> <p>17 was a new SOM process, correct?</p> <p>18        A. Well, the whole -- the whole</p> <p>19 evolution of suspicious order monitoring.</p> <p>20 I mean, it was an evolution in the</p> <p>21 process.</p> <p>22        Q. Okay. But this is a new</p> <p>23 process, the new process was the one</p> <p>24 described in the 8/25/10 SOP; is that</p>

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<p>1 right?</p> <p>2 A. No. I -- in the -- and</p> <p>3 according to that document, I -- and I</p> <p>4 think I've been consistent, the SOM</p> <p>5 process was up and running. It was up</p> <p>6 and running. So I wouldn't necessarily</p> <p>7 say it's a new process.</p> <p>8 When I use the term "new,"</p> <p>9 that's conceptually. I mean that may go</p> <p>10 back to, when you look at that -- you</p> <p>11 know, the DEA letter that you showed me.</p> <p>12 You know, they were -- the industry was</p> <p>13 changing. So we had to change.</p> <p>14 Q. Okay. So the SOM process</p> <p>15 that you are talking about, that -- that</p> <p>16 causes the generation of these item</p> <p>17 review reports, was this part of a</p> <p>18 process that developed from a 2008</p> <p>19 delivery of a software program by the</p> <p>20 Buzzeo related company?</p> <p>21 A. Yes. That would have been</p> <p>22 related to that.</p> <p>23 Q. Okay.</p> <p>24 A. But it was an enhancement of</p>	<p>1 Q. Okay.</p> <p>2 A. But I don't know any of the</p> <p>3 details around that at all.</p> <p>4 Q. Okay. Insofar as any</p> <p>5 software program, do you know the details</p> <p>6 of any software program that existed</p> <p>7 before 2008 that related to suspicious</p> <p>8 order monitoring?</p> <p>9 A. Again, I would -- I would</p> <p>10 reference that prescription drug</p> <p>11 monitoring report.</p> <p>12 Q. Okay. Do you know the</p> <p>13 details of it is what I'm asking.</p> <p>14 A. I do not know the details.</p> <p>15 Q. Okay. Do you know the</p> <p>16 details of what it monitored or how it</p> <p>17 monitored it?</p> <p>18 A. I do not know the details.</p> <p>19 Q. So -- so if we're trying to</p> <p>20 ask you, Frank Devlin, as to what your</p> <p>21 knowledge is of suspicious order</p> <p>22 monitoring in the -- in the nature of a</p> <p>23 software program before the 2008 Buzzeo</p> <p>24 program was delivered to CVS, is it true</p>
<p>1 our existing processes.</p> <p>2 Q. Right. Before that Buzzeo</p> <p>3 related software program was delivered to</p> <p>4 CVS in 2008, was there any</p> <p>5 software-related program that CVS</p> <p>6 implemented in its systems for doing</p> <p>7 suspicious order monitoring?</p> <p>8 A. I know on the field side</p> <p>9 there was some software programs that</p> <p>10 would address suspicious order</p> <p>11 monitoring. But, you know, as far as the</p> <p>12 details and how that worked, I'm just --</p> <p>13 I'm not privy to that. But I know there</p> <p>14 was a software program, and also even</p> <p>15 some manual processes -- processes that</p> <p>16 were in place.</p> <p>17 Q. Insofar as the details of</p> <p>18 that, you would not know?</p> <p>19 A. As far as the fields?</p> <p>20 Q. Yes.</p> <p>21 A. Fields, no, I really wasn't</p> <p>22 involved in that. I believe it was</p> <p>23 called Prescription Drug Monitoring</p> <p>24 Report.</p>	<p>1 that you -- your answer is you don't</p> <p>2 know?</p> <p>3 A. I would recommend you speak</p> <p>4 to someone else.</p> <p>5 MS. MILLER: Objection.</p> <p>6 BY MR. BAKER:</p> <p>7 Q. Okay. Is that because you</p> <p>8 don't know the details of it?</p> <p>9 MS. MILLER: Objection.</p> <p>10 THE WITNESS: Again, I know</p> <p>11 there was a software program</p> <p>12 called Prescription Drug</p> <p>13 Monitoring. I do not know the</p> <p>14 details of it.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. Okay. And you don't know</p> <p>17 how it operated or what it did to</p> <p>18 operate; is that accurate?</p> <p>19 MS. MILLER: Objection.</p> <p>20 THE WITNESS: I --</p> <p>21 BY MR. BAKER:</p> <p>22 Q. She objected, so I need to</p> <p>23 re-ask the question.</p> <p>24 Do you know the details of</p>

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<p>1 that program?</p> <p>2 A. I know there was a</p> <p>3 prescription drug monitoring program. I</p> <p>4 do not know the details of it.</p> <p>5 Q. Okay. Do you know who</p> <p>6 operated it?</p> <p>7 A. It was part of the field</p> <p>8 section of the loss prevention</p> <p>9 department.</p> <p>10 Q. Okay. Do you know who in</p> <p>11 loss prevention operated it?</p> <p>12 A. No.</p> <p>13 Q. Okay. Did you ever see it</p> <p>14 operated?</p> <p>15 MS. MILLER: Objection.</p> <p>16 THE WITNESS: I don't -- no,</p> <p>17 I don't recall seeing it</p> <p>18 operating.</p> <p>19 BY MR. BAKER:</p> <p>20 Q. Okay. Let me get back to</p> <p>21 this IRR process. Let me show you an</p> <p>22 e-mail that's Exhibit 71.</p> <p>23 (Document marked for</p> <p>24 identification as Exhibit</p>	<p>1 2012.</p> <p>2 THE WITNESS: Yes.</p> <p>3 MS. MILLER: Did you intend</p> <p>4 for that to be part of the</p> <p>5 exhibit?</p> <p>6 MR. BAKER: You know, I</p> <p>7 don't know, but we'll -- we'll let</p> <p>8 that stay as it is, because that's</p> <p>9 the way it was submitted.</p> <p>10 We'll go over that in just a</p> <p>11 second.</p> <p>12 BY MR. BAKER:</p> <p>13 Q. So go ahead and look at</p> <p>14 that. Is that true that's what it says,</p> <p>15 it says, "The IRR process has been</p> <p>16 shifted to our Knoxville DC with the LP</p> <p>17 analyst position," and this is dated</p> <p>18 March 14, 2011?</p> <p>19 A. That's what it states, yes.</p> <p>20 Q. Okay. Would that be</p> <p>21 consistent with your recollection of when</p> <p>22 it was moved from a DC to DC basis to a</p> <p>23 centralized location in Knoxville DC?</p> <p>24 MS. MILLER: Objection.</p>
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<p>1 CVS-Devlin-P-71.)</p> <p>2 BY MR. BAKER:</p> <p>3 Q. And this shows an e-mail</p> <p>4 from Mr. Mortelliti -- excuse me, from</p> <p>5 Ellen Demetrius to John Mortelliti. It's</p> <p>6 dated March 10, 2011. And above that is</p> <p>7 an e-mail dated March 14, 2011, from</p> <p>8 Mr. Mortelliti to Ms. Demetrius and</p> <p>9 copied to Ms. Hinkle and a copy to you.</p> <p>10 Do you see that?</p> <p>11 A. I'm reading through it now.</p> <p>12 Q. Okay. On 3/14/11 there's</p> <p>13 an -- an e-mail that you received that</p> <p>14 says, "The IRR process has been shifted</p> <p>15 to the Knoxville DC with the LP analyst</p> <p>16 position. I have forwarded the info to</p> <p>17 Pam Hinkle who will be overseeing the</p> <p>18 process going forward."</p> <p>19 Did I read that correctly?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Okay.</p> <p>22 MS. MILLER: Bill, before</p> <p>23 you move, there's a -- the second</p> <p>24 page appears to be an e-mail from</p>	<p>1 BY MR. BAKER:</p> <p>2 Q. Go ahead.</p> <p>3 MS. MILLER: Go ahead and</p> <p>4 answer.</p> <p>5 THE WITNESS: That -- that</p> <p>6 would be within the ballpark.</p> <p>7 BY MR. BAKER:</p> <p>8 Q. Okay. And do you know why</p> <p>9 it was moved from a distribution</p> <p>10 center-related program to Knoxville at</p> <p>11 that time?</p> <p>12 MS. MILLER: Objection.</p> <p>13 Asked and answered.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. Do you know?</p> <p>16 A. I believe I -- I had</p> <p>17 mentioned from a -- you know, the</p> <p>18 continuous evolution of the process and</p> <p>19 from an operational efficiency</p> <p>20 standpoint.</p> <p>21 Q. Did it -- did it cause less</p> <p>22 people to have to be employed by CVS to</p> <p>23 run the program if it was centralized in</p> <p>24 one location as opposed to run out of the</p>

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<p>1 11 distribution centers?</p> <p>2 MS. MILLER: Objection.</p> <p>3 BY MR. BAKER:</p> <p>4 Q. There was an objection.</p> <p>5 Did it -- did it cost less</p> <p>6 money to employ people to run the program</p> <p>7 if it was run out of a centralized</p> <p>8 location as opposed to a distribution</p> <p>9 center to distribution center location?</p> <p>10 A. Cost less money?</p> <p>11 Q. Yes, sir.</p> <p>12 A. No.</p> <p>13 Q. Okay. Look at the next page</p> <p>14 of that e-mail, if you would.</p> <p>15 A. The next page?</p> <p>16 Q. Yes. It's dated 11/11/12</p> <p>17 from Mr. Aaron Burtner to Christopher</p> <p>18 Tulley. 11/11/12. Do you see that?</p> <p>19 A. Aaron Burtner to Chris</p> <p>20 Tulley?</p> <p>21 Q. Do you see the e-mail right</p> <p>22 in front of you?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. Look right below it.</p>	<p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Is it true that</p> <p>4 you -- you would have one person doing</p> <p>5 the reviews if it's done in a centralized</p> <p>6 location?</p> <p>7 Is that true?</p> <p>8 MS. MILLER: Objection.</p> <p>9 THE WITNESS: During this</p> <p>10 time frame?</p> <p>11 BY MR. BAKER:</p> <p>12 Q. During the time frame that</p> <p>13 you had it done at a centralized location</p> <p>14 while you were at CVS. If you had one</p> <p>15 person -- if you had it done in one</p> <p>16 centralized location, was one person</p> <p>17 doing the reviews?</p> <p>18 A. Yes. We had, during my</p> <p>19 tenure, I believe we had one person, and</p> <p>20 then I believe we may have gone up to two</p> <p>21 people.</p> <p>22 Q. Okay. The one person during</p> <p>23 your tenure was who?</p> <p>24 A. I just don't recall their</p>
<p style="text-align: center;">Page 163</p> <p>1 Because you read e-mails from bottom to</p> <p>2 top in terms of time. Okay.</p> <p>3 The -- the one that's dated</p> <p>4 November 11, 2012, at 7:15 a.m., it says,</p> <p>5 "Hi guys, I met with John A. and Ellen on</p> <p>6 Friday. They advised me when this</p> <p>7 program was initially designed it was</p> <p>8 meant for the review that Aaron does to</p> <p>9 be done in all 11 DCs. Do you know why</p> <p>10 and when it was consolidated to just one</p> <p>11 DC doing the review?"</p> <p>12 Do you see that? Did I read</p> <p>13 that correctly?</p> <p>14 A. I do see that.</p> <p>15 Q. Okay. And do you see where</p> <p>16 it's answered at the top there,</p> <p>17 11/11/2012, Aaron Burtner to Christopher</p> <p>18 Tulley. Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And it says, "Chris,</p> <p>21 Pam will be able to shed more light but</p> <p>22 two big reasons. Review consistency with</p> <p>23 having just one person completing the</p> <p>24 reviews rather than 11 people."</p>	<p style="text-align: center;">Page 165</p> <p>1 name.</p> <p>2 Q. Was it initially John</p> <p>3 Mortelliti?</p> <p>4 A. Well, initially John was</p> <p>5 involved, yes.</p> <p>6 Q. Was he doing IRR reviews in</p> <p>7 Lumberton, New Jersey?</p> <p>8 A. Yes, sir.</p> <p>9 Q. Okay. And was he doing it</p> <p>10 by himself, one person?</p> <p>11 A. At one point in time, yes.</p> <p>12 Q. Okay. And when it -- the</p> <p>13 process was shifted out of the</p> <p>14 distribution centers to Knoxville, who</p> <p>15 was the one person doing it in Knoxville?</p> <p>16 A. I don't recall.</p> <p>17 MS. MILLER: Objection.</p> <p>18 BY MR. BAKER:</p> <p>19 Q. Was -- when the process was</p> <p>20 transferred out of the distribution</p> <p>21 centers, the SOM IRR review process, when</p> <p>22 that happened, when it's transferred out</p> <p>23 of the distribution centers back to a</p> <p>24 centralized location in Knoxville, that,</p>

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<p>1 according to the documentation, was      2 around March of 2012, correct?      3 MS. MILLER: Objection.      4 March of --      5 BY MR. BAKER:      6 Q. March of 2011. Is that      7 correct?      8 A. According to the      9 documentation --      10 Q. Okay.      11 A. -- it does appear March of      12 2011, yes.      13 Q. And when that happened, was      14 Pam Hinkle the one that was doing the IRR      15 reviews?      16 A. I don't believe so.      17 Q. Who was doing them?      18 A. I don't recall their name.      19 Q. Okay. Was it one person      20 that was doing the IRR reviews in      21 Knoxville?      22 A. It would have been one      23 person, but I'm sure Pam had some      24 involvement.</p>	<p>1 THE WITNESS: No.      2 BY MR. BAKER:      3 Q. You were not involved with      4 supervising any of the reviews of the      5 IRRs?      6 MS. MILLER: Objection.      7 BY MR. BAKER:      8 Q. Were you involved with      9 supervising the review of the IRRs?      10 A. I guess the definition of      11 "supervising" --      12 Q. What was your involvement      13 with respect to the IRRs and the review      14 of the IRRs, if anything, while you were      15 at CVS?      16 A. I was not involved in the      17 day-to-day review of the IRR.      18 Q. What was your involvement      19 with respect to management of how many      20 people would review IRRs?      21 A. I would be involved in the      22 decision as far as how many people would      23 review the IRR.      24 Q. Okay. And that was from</p>
<p>1 Q. Who was that one person?      2 A. I do not recall their name.      3 Q. Okay. And did this continue      4 to be a one-person-related review process      5 until you left in 2012?      6 A. No.      7 MS. MILLER: Objection.      8 BY MR. BAKER:      9 Q. How many people reviewed the      10 IRRs when the program was in Knoxville?      11 A. I believe it began with one.      12 Q. Okay. And you don't      13 remember who that was?      14 A. I do not recall their name.      15 Q. Okay. Did it evolve into      16 two?      17 A. It may have.      18 Q. Do you know one way or the      19 other?      20 A. I -- I just -- it may have.      21 I just -- I just -- I don't remember.      22 Q. Okay. Were you involved      23 with supervising any of that?      24 MS. MILLER: Objection.</p>	<p>1 what period to what period that you were      2 involved in making that decision?      3 A. It would probably be from      4 the beginning of the process till I left.      5 Q. And the process began when?      6 A. Maybe 2008, 2009 period.      7 Q. The IRR? That's consistent      8 with when the Buzzeo --      9 A. Yeah.      10 Q. -- software program was      11 delivered.      12 A. Yeah, it would be -- it      13 would correlate to that.      14 Q. Okay. Let's just make sure      15 I have the history correct. The Buzzeo      16 program was delivered to CVS in 2008; is      17 that right?      18 A. I think so.      19 Q. Okay.      20 A. I think so.      21 Q. The beginning of the year or      22 the end of the year? Or do you recall?      23 A. Probably closer to the end      24 of the year.</p>

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<p>1 Q. Okay. And the Buzzeo      2 program, did it have an algorithm within      3 it? Do you recall that?      4 A. I do recall an algorithm.      5 Q. Okay. Do you -- do you know      6 what the algorithm was?      7 A. I know it had an algorithm.      8 And I know there were, you know, it's      9 something that the Buzzeo team put      10 together. I know it involved the      11 assistance of statisticians.</p> <p>12 But as far as the      13 particulars of the algorithm and the      14 details of the algorithm, I defer it to      15 the expertise that we had hired.</p> <p>16 Q. Okay. Do you know whether      17 you could even interpret what the      18 algorithm meant if somebody showed it to      19 you?</p> <p>20 A. No.</p> <p>21 MS. MILLER: Objection.</p> <p>22 Give me a chance. Thank you.</p> <p>23 BY MR. BAKER:</p> <p>24 Q. Do you know?</p>	<p>1 third-to-last paragraph where it starts      2 with, "CVS is responsible."      3 Do you see that?      4 A. Yes, sir.      5 Q. Okay. Let me read that to      6 you. I'm reading from the 8/25/2010 DEA      7 SOP that was adopted by CVS that date; is      8 that correct? Is that what I'm reading      9 from?      10 A. That's what it appears, yes.      11 Q. Okay. And this, according      12 to the documentation, is when the      13 suspicious order monitoring policy and      14 procedure was put into a written form to      15 place inside the standard operating      16 procedure manual; is that correct?      17 A. Again the process was in      18 place, but this is -- this appears to be      19 a formalized SOP.      20 Q. All right. It says, "CVS is      21 responsible for ensuring compliance with      22 DEA regulatory requirements. And that      23 responsibility cannot be abdicated or      24 transferred to anyone else."</p>
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<p>1 MS. MILLER: Objection.</p> <p>2 BY MR. BAKER:</p> <p>3 Q. Did you answer that      4 question? Could you interpret what the      5 coefficients mean in the algorithm if      6 somebody showed them to you?</p> <p>7 MS. MILLER: Objection.</p> <p>8 THE WITNESS: No. You know,      9 I think it was -- there was      10 involvement from statisticians      11 that put the algorithm together.      12 And I certainly don't present      13 myself as a statistician.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. Okay. Let me go back to      16 Exhibit 97, please.</p> <p>17 MS. MILLER: Which document      18 is that?</p> <p>19 MR. BAKER: That is the DEA      20 SOP, 8/25/10.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Go to Page 1 of that      23 document, which is Bates Number 88957.</p> <p>24 And go down to the</p>	<p>1 That's in your manual,      2 correct?      3 A. That's what it states.      4 Q. Okay. So you understand      5 from your own manual that that      6 responsibility cannot be abdicated or      7 transferred to anyone else? You      8 understand that from your own manual?      9 MS. MILLER: Objection.</p> <p>10 MR. BAKER: There was an      11 objection.</p> <p>12 BY MR. BAKER:</p> <p>13 Q. Do you understand that      14 that's what the manual said at CVS      15 8/25/10? Do you understand that?      16 A. I don't quite understand as      17 far as -- I interpret abdicating or      18 transferring would be the entire program.      19 Q. Now, insofar as what these      20 coefficient measured within the algorithm      21 and that process that was delivered by      22 the Buzzeo company, do you know what they      23 measured?      24 A. I don't recall.</p>

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<p>1 Q. Okay. Do you know anything      2 about an algorithm scoring system that      3 was developed within that process?      4 A. I know there was some      5 scoring terminology, but the details of      6 that, I just -- I do not recall.      7 Q. Okay. And with respect to      8 that scoring process, do you know whether      9 or not it was ever changed from what it      10 was originally designed to do, to flag      11 at?</p> <p>12 MS. MILLER: Objection.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Let's go back. I withdraw      15 the question.</p> <p>16 Let's go back to the IRR.</p> <p>17 I want to make sure we have      18 this down because it's very important for      19 me to understand.</p> <p>20 The IRR process, that is      21 something, according to your testimony,      22 that started with the delivery of the      23 Buzzeo program in 2008. Is that right or      24 wrong?</p>	<p>1 2008?      2 MS. MILLER: Objection.      3 BY MR. BAKER:      4 Q. Go ahead.      5 MS. MILLER: You may answer.      6 THE WITNESS: That would be      7 in Lumberton.      8 BY MR. BAKER:      9 Q. Okay. And was that with      10 Mr. Mortelliti doing the reviews?      11 A. Yes.      12 Q. Okay. And then from 2008      13 all the way up to 2010, is that where the      14 IRRs were being reviewed, in Lumberton?      15 A. I can't recall 100 percent.      16 Q. Okay. To the best of your      17 knowledge, is that where they were being      18 reviewed?      19 A. They may have been. I just      20 don't know, as I testified earlier, that      21 as the program evolved, you know --      22 it's --      23 Q. I understand.      24 A. -- from centralization to</p>
<p>1 A. I believe that's correct.</p> <p>2 Q. Okay. And the IRR process      3 from 2008 when that Buzzeo program was      4 delivered up through the time that we saw      5 Mr. Mortelliti as being the person      6 described in the SOM SOP 8/25/10 being in      7 Lumberton, New Jersey reviewing these      8 IRRs, was there any other person that was      9 reviewing them from 2008 to 2010 besides      10 Mr. Mortelliti in Lumberton, New Jersey?      11 A. I believe there may have      12 been.      13 Q. Okay. From 2008 to 2010, is      14 that where the IRRs were being reviewed      15 in Lumberton?      16 MS. MILLER: Objection.      17 THE WITNESS: I can't place      18 exact times.      19 BY MR. BAKER:      20 Q. Okay. When the program was      21 first delivered, the Buzzeo computer      22 program, the software program that caused      23 the development of this IRR system, where      24 were the IRRs initially being reviewed in</p>	<p>1 distribution center and --      2 Q. We're going to try to take      3 it sequentially.      4 A. Right.      5 Q. Okay. 2008, you testified      6 that Mr. Mortelliti was reviewing the      7 IRRs in Lumberton, correct?      8 A. That is correct.      9 MS. MILLER: Objection. I      10 don't think he testified that it      11 was necessarily in 2008.      12 BY MR. BAKER:      13 Q. Okay. In 2008, who was      14 reviewing the IRRs and where were they      15 being reviewed?      16 A. Again, it -- I guess it      17 would come down to the -- the initial      18 delivery of the Buzzeo program.      19 Q. Okay.      20 A. I'll refer to it as the      21 Buzzeo program.      22 Q. Were there any IRRs being      23 reviewed in 2008?      24 A. I can't recall the exact</p>

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<p>1 date. I'd have to see when that program      2 was delivered.</p> <p>3 Q. Okay. Were there any IRRs      4 being reviewed in 2009?</p> <p>5 A. I believe so.</p> <p>6 Q. Who was reviewing the IRRs?</p> <p>7 A. Initially, initially when      8 the Buzzeo program was delivered,      9 whenever that was, the initial review      10 would have involved John Mortelliti.</p> <p>11 Q. In 2009, if that's when the      12 Buzzeo program was put in operation, is      13 that when Mr. Mortelliti would have been      14 doing the IRR reviews in Lumberton?</p> <p>15 A. Can you repeat that?</p> <p>16 Q. If the IRRs were being      17 reviewed in 2009, then would it have been      18 Mr. Mortelliti, to the best of your      19 recollection, in Lumberton?</p> <p>20 A. Again, once the Buzzeo      21 program was delivered and the IRR was      22 produced, the initial review was taking      23 place with Mr. Mortelliti.</p> <p>24 Q. Okay. We saw from the DEA</p>	<p>1 the document you've shown me, that's what      2 it's dated.</p> <p>3 Q. Okay. And then according to      4 the -- the next set of documents that I      5 showed you, it was sent back into a      6 centralized location in March of 2011; is      7 that right?</p> <p>8 MS. MILLER: Objection.</p> <p>9 BY MR. BAKER:</p> <p>10 Q. In Knoxville?</p> <p>11 A. I -- we're going through so      12 many documents here. I would want to go      13 back and look at the documents.</p> <p>14 Q. Okay. We'll let the      15 documents speak for themselves.</p> <p>16 But in any event, once it      17 got to Knoxville, how long did it stay in      18 Knoxville before it was moved to      19 somewhere else to your knowledge?</p> <p>20 A. I believe it was in      21 Knoxville till my last day of employment      22 with CVS.</p> <p>23 Q. Okay. And your last day of      24 employment with CVS was in October of</p>
<p style="text-align: center;">Page 179</p> <p>1 SOP -- SOM SOP 8/25/10 that he is the one      2 identified as the person reviewing the      3 IRRs in Lumberton, true?</p> <p>4 A. Based on the SOP, that is      5 true.</p> <p>6 Q. Okay. So if that's true,      7 then it shifted at some point from there      8 to the distribution centers, then back to      9 Knoxville, according to what the      10 documentation shows, right?</p> <p>11 A. According to the      12 documentation, that is correct.</p> <p>13 Q. Okay. And according to the      14 DEA talking points that were shown in      15 September, to be dated September of 2010      16 that I've showed you, that's when,      17 according to at least the DEA talking      18 points, it was sent to a distribution      19 center-wide basis; is that right or      20 wrong?</p> <p>21 MS. MILLER: Objection.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. You don't know?</p> <p>24 A. According to the document,</p>	<p style="text-align: center;">Page 181</p> <p>1 2012?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. When it was in      4 Knoxville, how many people were reviewing      5 the IRRs to the best of your knowledge?</p> <p>6 MS. MILLER: Objection.</p> <p>7 THE WITNESS: It was      8 definitely one. Maybe two. I      9 just don't recall.</p> <p>10 BY MR. BAKER:</p> <p>11 Q. Okay. The "definitely one"      12 is a person that you can't recall the      13 name of; is that correct?</p> <p>14 A. Correct.</p> <p>15 Q. Okay. And the two, who      16 would -- who would the Number 2 have      17 been?</p> <p>18 A. I didn't know --</p> <p>19 Q. Again, somebody you can't      20 recall the name of?</p> <p>21 MS. MILLER: Objection.</p> <p>22 THE WITNESS: I'm not the      23 best with names.</p> <p>24 BY MR. BAKER:</p>

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<p>1 Q. Okay. And so far as your      2 direct involvement with reviewing IRRs,      3 what was that direct involvement, if any?      4 MS. MILLER: Objection.      5 Asked and answered.</p> <p>6 BY MR. BAKER:</p> <p>7 Q. What was it?</p> <p>8 A. My involvement would be to      9 just ensure that the IRRs were being      10 reviewed.</p> <p>11 Q. Okay. Did you actually      12 review IRRs yourself?</p> <p>13 A. I did not.</p> <p>14 Q. Do you know how to -- how to      15 even review an IRR?</p> <p>16 MS. MILLER: Objection.</p> <p>17 THE WITNESS: Not at this      18 time.</p> <p>19 BY MR. BAKER:</p> <p>20 Q. Okay. Did you know at the      21 time when you were at CVS how to review      22 an IRR?</p> <p>23 MS. MILLER: Objection.</p> <p>24 BY MR. BAKER:</p>	<p>1 MS. MILLER: Objection.      2 THE WITNESS: I -- I never      3 had the responsibility of      4 reviewing the IRR.</p> <p>5 BY MR. BAKER:</p> <p>6 Q. I think the question is, did      7 you know how to review an IRR in such a      8 manner that you felt comfortable coming      9 to any conclusions related to that review      10 of the IRR as it relates to the      11 suspicious order monitoring process?</p> <p>12 MS. MILLER: Objection.</p> <p>13 THE WITNESS: I would -- I      14 would defer it to the people      15 working for me.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. Who are the people working      18 for you that you would defer to?</p> <p>19 A. It would be -- regarding      20 what time frame?</p> <p>21 Q. Any time frame that the --      22 that you were employed at CVS and the IRR      23 process, review process, was implemented?</p> <p>24 A. Certainly John Mortelliti.</p>
<p>1 Q. IRR being item review      2 report. Did you even know how to do      3 that?</p> <p>4 MS. MILLER: Objection.</p> <p>5 BY MR. BAKER:</p> <p>6 Q. Did you?</p> <p>7 A. I think conceptually I would      8 have an idea, but I would never say I was      9 the IRR expert.</p> <p>10 Q. Okay. From reviewing an      11 IRR, could you draw any conclusions to      12 the extent of your knowledge of how to      13 review IRRs when you were at CVS?</p> <p>14 MS. MILLER: Objection.</p> <p>15 THE WITNESS: I mean I      16 would -- I would rely on the      17 people working for me.</p> <p>18 BY MR. BAKER:</p> <p>19 Q. Okay. In other words, you      20 wouldn't rely upon your own conclusions      21 that you would reach for -- from      22 reviewing an IRR, you would rely upon the      23 people that work for you, is that what      24 you said?</p>	<p>1 Q. Okay.      2 A. Probably Pam Hinkle.      3 Q. Anybody else?      4 A. Those would be the two main      5 people.      6 Q. And Pam Hinkle's job with      7 relation to review of IRRs in that -- in      8 that context was what, what was her job?</p> <p>9 MS. MILLER: Objection.</p> <p>10 THE WITNESS: I believe she      11 would have been knowledgeable of      12 the process.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. What was her job title?</p> <p>15 A. I don't recall the exact job      16 title.</p> <p>17 Q. Okay. Now, during the time      18 that you were, I guess, appointed with      19 respect to the -- the SOM SOP, in the      20 8/25/10 SOM SOP policy and procedure      21 manual, did you see that where you were      22 appointed to be the one to communicate to      23 the DEA and the only person to      24 communicate to the DEA, do you remember</p>
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<p>1 that?</p> <p>2 MS. MILLER: Objection.</p> <p>3 MR. BAKER: There was an</p> <p>4 objection. Let's go back.</p> <p>5 BY MR. BAKER:</p> <p>6 Q. Exhibit 97. Do you recall</p> <p>7 in Exhibit 97 where I pointed out to you</p> <p>8 that it said, "The only person who shall</p> <p>9 talk to the DEA is the director of loss</p> <p>10 prevention, Frank Devlin," do you recall</p> <p>11 that?</p> <p>12 A. At what page are you on?</p> <p>13 Q. Mr. Devlin, look at</p> <p>14 Page 88988 Roman numeral VIII-8. Reports</p> <p>15 to DEA.</p> <p>16 A. Okay. I see that.</p> <p>17 Q. Okay. Now, it says here</p> <p>18 that the director of loss -- the director</p> <p>19 of logistics loss prevention will be the</p> <p>20 only representative of CVS contacting the</p> <p>21 DEA. Do you see that?</p> <p>22 A. I do see that.</p> <p>23 Q. Okay. How long did you</p> <p>24 remain that person?</p>	<p>1 MS. MILLER: Objection.</p> <p>2 THE WITNESS: I was employed</p> <p>3 at CVS from 1991 through 2012.</p> <p>4 BY MR. BAKER:</p> <p>5 Q. Okay. Are you aware of when</p> <p>6 Pam Hinkle reported any suspicious order</p> <p>7 of controlled substances being</p> <p>8 distributed out of a CVS distribution</p> <p>9 center to the -- to the DEA?</p> <p>10 A. I do not recall the time</p> <p>11 frame.</p> <p>12 Q. Okay. Do you recall what</p> <p>13 distribution center it was distributed</p> <p>14 out of, the one that she allegedly</p> <p>15 reported, according to your recollection?</p> <p>16 A. I do not recall the</p> <p>17 distribution center and again 100 percent</p> <p>18 confidence in the store. I can't say</p> <p>19 100 percent what store it was.</p> <p>20 Q. Okay. During the entire</p> <p>21 time that you were employed at CVS, are</p> <p>22 you aware of any suspicious order of</p> <p>23 controlled substances being reported by</p> <p>24 CVS to the DEA as it relates to any store</p>
<p>1 A. I do not recall the time</p> <p>2 frame. I do recall that this process did</p> <p>3 evolve and, you know, from a delegation</p> <p>4 standpoint and as Pam Hinkle became more</p> <p>5 involved with day-to-day DEA issues, then</p> <p>6 I know I -- certainly I felt comfortable</p> <p>7 with Pam contacting the DEA.</p> <p>8 Q. Did -- did Pam work for you?</p> <p>9 A. Pam did work for me.</p> <p>10 Q. Okay. During the entire</p> <p>11 time that you were employed at CVS, did</p> <p>12 you ever contact the DEA to report a</p> <p>13 suspicious order of controlled</p> <p>14 substances?</p> <p>15 A. I did not.</p> <p>16 Q. Okay. During the entire</p> <p>17 time that you worked at CVS, are you</p> <p>18 aware if Pam Hinkle ever contacted the</p> <p>19 DEA to report the suspicious order of</p> <p>20 controlled substances?</p> <p>21 A. I believe there was one time</p> <p>22 that she did.</p> <p>23 Q. Okay. One time over a</p> <p>24 period of what years that you were there?</p>	<p>1 in Ohio?</p> <p>2 A. No, I don't recall any.</p> <p>3 Q. Same question as it relates</p> <p>4 to any store in Florida.</p> <p>5 MS. MILLER: Objection.</p> <p>6 THE WITNESS: No, I don't</p> <p>7 recall.</p> <p>8 BY MR. BAKER:</p> <p>9 Q. During the entire time that</p> <p>10 you were employed at CVS, are you aware</p> <p>11 of any report by CVS to the DEA of any</p> <p>12 distribution of controlled substance to</p> <p>13 any pharmacy in West Virginia?</p> <p>14 A. No, I don't recall.</p> <p>15 Q. Did anybody ever bring to</p> <p>16 your attention anything about a</p> <p>17 suspicious order out of any transaction</p> <p>18 between a CVS pharmacy and a CVS</p> <p>19 distribution center during the entire</p> <p>20 time that you were employed at CVS?</p> <p>21 MS. MILLER: Objection.</p> <p>22 MR. BAKER: She objected.</p> <p>23 BY MR. BAKER:</p> <p>24 Q. During the entire time that</p>

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<p>1 you were employed at CVS, did anybody      2 ever bring to your attention a suspicious      3 order by any pharmacy, by any CVS      4 pharmacy, to any CVS distribution center?</p> <p>5 A. Yes.      6 Q. When?      7 A. I do not recall a time      8 frame.      9 Q. What pharmacy and what      10 distribution center?      11 A. I know it was a situation I      12 discussed with general counsel at CVS.      13 Q. Okay.      14 MS. MILLER: Objection.      15 BY MR. BAKER:      16 Q. I'm not asking what you      17 discussed with your counsel, okay.      18 MS. MILLER: No. Objection.      19 I'm going to instruct him not to      20 answer to the extent there's      21 information that may reveal      22 attorney/client communications.      23 And he did just testify      24 about a suspicious order that he</p>	<p>1 center?      2 A. Yes.      3 Q. Okay. When was this?      4 A. I do not recall.      5 Q. What -- approximately what      6 year was it?      7 A. It could be '10, '11, maybe      8 '12. I just don't recall.      9 Q. Out of what state was the      10 order made by a pharmacy to a      11 distribution center of CVS?      12 MS. MILLER: And again, he's      13 asking you whether there was ever      14 a suspicious order.      15 THE WITNESS: Okay.      16 MS. MILLER: An order --      17 right?      18 BY MR. BAKER:      19 Q. I'm asking you, did anybody      20 bring to your attention the existence of      21 a suspicious order by a CVS pharmacy to a      22 CVS distribution center? That's what I'm      23 asking you?      24 A. Okay. Okay.</p>
<p>1 was aware of that was reported.      2 MR. BAKER: Yeah, I'm trying      3 to ask him. Let me --      4 BY MR. BAKER:      5 Q. I want you to understand      6 that I'm not trying to ask you any      7 questions about your attorneys'      8 conversations with you or your      9 attorney -- or your conversations with      10 CVS' attorneys, okay? I want you to      11 understand that before I ask you the next      12 set of questions.      13 Are we clear about that? So      14 when I ask you the question, I don't want      15 you to tell me what your attorneys said      16 to you or what you said to them. Is that      17 clear?      18 A. Yes.      19 Q. The question is this:      20 During the entire time that you were      21 employed at CVS, did anybody bring to      22 your attention the existence of a      23 suspicious order that had been ordered by      24 a CVS pharmacy from a CVS distribution</p>	<p>1 Q. I'm asking you -- you said      2 you thought there was one, right?      3 A. In -- actually, in -- I      4 guess from a clarification standpoint, I      5 would -- I would deem it as potentially      6 suspicious order.      7 Q. Okay. Did that ever get      8 reported to the DEA by you?      9 A. No.      10 Q. Do you know what state that      11 occurred in?      12 A. Again, when it was -- and I      13 apologize as far as the terminology goes,      14 but it was a potentially suspicious      15 order.      16 Q. Okay. During the entire      17 time that you were there, are you aware,      18 specifically of any suspicious order that      19 was reported by CVS to the DEA? Any?      20 MS. MILLER: Objection.      21 Asked and answered.      22 THE WITNESS: Yes.      23 BY MR. BAKER:      24 Q. Okay. Who did the</p>

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<p>1 reporting?</p> <p>2 A. I believe it was Pam Hinkle.</p> <p>3 Q. When was the reporting done?</p> <p>4 A. I do not recall.</p> <p>5 Q. Was it brought to your</p> <p>6 attention?</p> <p>7 A. It would have been, yes.</p> <p>8 Q. Do you know what state the</p> <p>9 order occurred within?</p> <p>10 A. I'm just not 100 percent</p> <p>11 sure.</p> <p>12 Q. Okay. During the entire</p> <p>13 time that you were employed at CVS, I</p> <p>14 think you already testified, you're not</p> <p>15 aware of any suspicious orders being</p> <p>16 reported to the DEA for orders that were</p> <p>17 made by CVS pharmacies to CVS</p> <p>18 distribution centers as it relates to</p> <p>19 Ohio, the state of Ohio, correct?</p> <p>20 A. That -- that does not sound</p> <p>21 familiar.</p> <p>22 Q. Okay. Insofar as the IRR</p> <p>23 process, you told me that you had</p> <p>24 delegated that to some extent to other</p>	<p>1 want to take a little bit of a</p> <p>2 break?</p> <p>3 MS. MILLER: Yeah.</p> <p>4 MR. BAKER: Okay.</p> <p>5 THE VIDEOGRAPHER: Off the</p> <p>6 record. 11:32.</p> <p>7 (Short break.)</p> <p>8 THE VIDEOGRAPHER: Back on</p> <p>9 record. Beginning Media File</p> <p>10 Number 5. The time is 11:48.</p> <p>11 BY MR. BAKER:</p> <p>12 Q. Mr. Devlin, I'm going to</p> <p>13 show you Exhibit 146.</p> <p>14 (Document marked for</p> <p>15 identification as Exhibit</p> <p>16 CVS-Devlin-P-146.)</p> <p>17 BY MR. BAKER:</p> <p>18 Q. This is a letter dated</p> <p>19 March 22, 2007, to you from Buzzeo PDMA.</p> <p>20 Is that Ron Buzzeo?</p> <p>21 MS. MILLER: Bill, this has</p> <p>22 highlights on it. Is this your</p> <p>23 copy?</p> <p>24 MR. BAKER: Probably.</p>
<p>1 people. Is that right?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And you tell me who</p> <p>4 those other people were, you mentioned</p> <p>5 John Mortelliti and you mentioned Pam</p> <p>6 Hinkle, correct?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. Who else? To who</p> <p>9 else did you delegate that?</p> <p>10 A. Well, they were the LP</p> <p>11 analyst position.</p> <p>12 Q. Do you know who those were?</p> <p>13 A. I just don't recall their</p> <p>14 names.</p> <p>15 Q. Okay. During the time that</p> <p>16 you were there --</p> <p>17 MR. BAKER: Let's take a</p> <p>18 break for just one second. I've</p> <p>19 got to --</p> <p>20 MS. MILLER: Can we actually</p> <p>21 take -- I think we've been going</p> <p>22 for a while. Can we take a little</p> <p>23 bit of a break?</p> <p>24 MR. BAKER: Okay. Do you</p>	<p>1 Page 195</p> <p>1 BY MR. BAKER:</p> <p>2 Q. Is that Ron Buzzeo, is that</p> <p>3 who you are talking about?</p> <p>4 A. Yes, sir.</p> <p>5 Q. Okay. This is a letter</p> <p>6 directed to you, Frank Devlin, director</p> <p>7 of logistics and loss prevention,</p> <p>8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. And this is the</p> <p>11 company that you were subcontracting with</p> <p>12 for CVS to develop that software program</p> <p>13 that would implement the suspicious order</p> <p>14 monitoring of controlled substances,</p> <p>15 correct?</p> <p>16 MS. MILLER: Objection.</p> <p>17 MR. BAKER: All right.</p> <p>18 There's an objection.</p> <p>19 BY MR. BAKER:</p> <p>20 Q. What was this company, what</p> <p>21 were they, in the context of CVS and</p> <p>22 suspicious order monitoring?</p> <p>23 A. I had -- this was our -- I</p> <p>24 viewed them as our subject matter experts</p>

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<p>1 around DEA-related matters.</p> <p>2 Q. Okay. Is this who you hired</p> <p>3 on behalf of CVS to write the software</p> <p>4 program that was implemented into the</p> <p>5 suspicious order monitoring program at</p> <p>6 CVS?</p> <p>7 MS. MILLER: Objection.</p> <p>8 MR. BAKER: There was an</p> <p>9 objection. All right. So here we</p> <p>10 go.</p> <p>11 BY MR. BAKER:</p> <p>12 Q. And every time it happens, I</p> <p>13 have to rephrase the question until I get</p> <p>14 it right and there's no objection. Okay?</p> <p>15 So here we go.</p> <p>16 Was this the company that</p> <p>17 you hired to write the software program</p> <p>18 for CVS?</p> <p>19 MS. MILLER: Objection.</p> <p>20 BY MR. BAKER:</p> <p>21 Q. Was this the company that</p> <p>22 wrote the software program for CVS?</p> <p>23 MS. MILLER: Objection.</p> <p>24 BY MR. BAKER:</p>	<p>1 MS. MILLER: Objection.</p> <p>2 BY MR. BAKER:</p> <p>3 Q. What involvement, if any,</p> <p>4 did you have with respect to the</p> <p>5 retunement process?</p> <p>6 A. I can't recall exact dates</p> <p>7 or exact calls, you know, exact time</p> <p>8 frame, but I do, you know, recall</p> <p>9 participating in conference calls.</p> <p>10 (Document marked for</p> <p>11 identification as Exhibit</p> <p>12 CVS-Devlin-P-150.)</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Let me show you Exhibit 150.</p> <p>15 Okay. This is an e-mail dated</p> <p>16 February 9, 2011, from Mr. Mortelliti to</p> <p>17 Frank Devlin. That's you, correct?</p> <p>18 A. Yes, sir.</p> <p>19 Q. Okay. And it says,</p> <p>20 "Thankfully." And then below that,</p> <p>21 February 9, 2011, from Robert Williamson</p> <p>22 at Cegedim.com -- that's the Buzzeo</p> <p>23 company, is it not?</p> <p>24 A. I believe it's Cegedim.</p>
<p>1 Q. Who wrote the software</p> <p>2 program for CVS?</p> <p>3 A. That would have been Cegedim</p> <p>4 Dendrite or Buzzeo PDMA.</p> <p>5 Q. Okay. When was that</p> <p>6 software program written?</p> <p>7 A. I believe it's -- it took a</p> <p>8 period of time. The exact date that it</p> <p>9 was written, I don't recall the exact</p> <p>10 date that it was written.</p> <p>11 Q. Okay. Was the program ever</p> <p>12 rewritten after the time that it was</p> <p>13 initially written?</p> <p>14 MS. MILLER: Objection.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. Was the program ever retuned</p> <p>17 after the time that it was originally</p> <p>18 delivered to CVS?</p> <p>19 A. Yes.</p> <p>20 Q. When was it retuned?</p> <p>21 A. I do not recall.</p> <p>22 Q. Were you involved with</p> <p>23 anything that caused the retunement</p> <p>24 process to take place?</p>	<p>1 Q. Is it correct?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. And it's to</p> <p>4 Mortelliti, Misiaczek, Ellen Demetrius,</p> <p>5 and it has a CVS retunement attached to</p> <p>6 it; is that correct?</p> <p>7 A. That's what it states, yes.</p> <p>8 Q. It says, "Attached is the</p> <p>9 CVS retunement documentation. It</p> <p>10 contains a revised algorithm and</p> <p>11 additional required information for your</p> <p>12 suspicious order monitoring system."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Now, if you go to</p> <p>16 that retunement document. If you turn to</p> <p>17 Page 1, it says at the bottom, "In</p> <p>18 December 2008, CCS delivered an initial</p> <p>19 SOM model to CVS which was" -- "which CVS</p> <p>20 integrated into their order management</p> <p>21 process."</p> <p>22 A. I'm sorry. You said Page 1.</p> <p>23 Q. Right here. The retunement.</p> <p>24 Page --</p>

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<p>1 MS. MILLER: He's moved -- 2 he's moved to the attachment. 3 BY MR. BAKER: 4 Q. Page 1 of the retunement. 5 Right here. 6 A. Okay. I just -- I went to 7 the following page. 8 Q. I'll physically show it to 9 you. 10 All right. It says, "In 11 December 2008" -- do you see that -- 12 A. Yes, sir. 13 Q. -- at the bottom? 14 A. Yes, sir. 15 Q. -- "CCS delivered an initial 16 SOM model to CVS, which CVS integrated 17 into their order management process." 18 Is that what that says? 19 A. Yes. 20 Q. Is that when CVS first 21 implemented that program? 22 A. You know, according to that 23 document, you know, I'd say around the 24 time frame --</p>	<p>1 Q. Go ahead. 2 A. I don't recall the exact 3 time frame it was implemented. 4 Q. Okay. And then it says, "In 5 July of 2009, CVS staff advised that the 6 current SOM model was pending a large 7 number of orders that were not suspicious 8 on their face and cleared by CVS staff." 9 Do you see that? 10 A. Let me read that. I do see 11 that. 12 Q. Okay. Were you involved 13 with the process of reviewing what was 14 being pended by this program to determine 15 whether or not the orders were suspicious 16 or not suspicious on their face. Were 17 you involved in that process? 18 A. Not in any great detail. 19 Q. Okay. See, I didn't ask if 20 you were involved in any great detail. I 21 asked you if you were involved. So were 22 you involved? 23 MS. MILLER: Objection. 24 BY MR. BAKER:</p>
<p>1 Q. Okay. 2 A. -- that's when the SOM 3 process would have been enhanced to 4 include this program. 5 Q. Okay. Did it take a while 6 to get it implemented beyond the date 7 that it was delivered? 8 MS. MILLER: Objection. 9 THE WITNESS: I don't -- 10 BY MR. BAKER: 11 Q. You don't what? You don't 12 recall? You don't know? You don't what? 13 What did you just say? 14 MS. MILLER: You didn't let 15 him finish his response. 16 BY MR. BAKER: 17 Q. Go ahead. 18 A. Can you repeat the question? 19 Q. Did it get implemented in 20 December 2008? In other words, did CVS 21 put this in operation in December 2008 or 22 did it get put into operation in 2009? 23 MS. MILLER: Objection. 24 BY MR. BAKER:</p>	<p>1 Q. Were you involved? 2 MS. MILLER: Objection. 3 BY MR. BAKER: 4 Q. Answer. 5 A. To an extent. 6 Q. Okay. What extent were you 7 involved? 8 MS. MILLER: Objection. 9 BY MR. BAKER: 10 Q. Tell me. 11 A. More from a project manager 12 overview that the program was being 13 evaluated that were identifying, as it 14 states, a large amount of orders pending, 15 that it was being reviewed and to try 16 and -- trying to, I guess, figure out why 17 it was pending so many large orders. 18 I did not personally review 19 the reports. I mean, that is something 20 that I did delegate. I did, as I 21 mentioned earlier, I participated in 22 conference calls which would have 23 resulted in some changes. 24 Q. Did you ever have any</p>
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<p>1 involvement with the algorithm scoring      2 process?</p> <p>3 MS. MILLER: Objection.</p> <p>4 THE WITNESS: No. I didn't      5 get involved in the scoring      6 process.</p> <p>7 BY MR. BAKER:</p> <p>8 Q. Okay. Turn to Page 3 of      9 that retunement document.</p> <p>10 Okay. Look at the bottom of      11 Paragraph 1 on Page 3 where it says, "The      12 model has been designed so that any order      13 with a score of .15 or higher is      14 identified as suspicious, pended and      15 should be investigated further."</p> <p>16 Do you see that? Look.</p> <p>17 A. You're on Page 3 of the      18 document?</p> <p>19 Q. Right here where it's      20 underlined. "The model has been designed      21 so that any order with a score of .15 or      22 higher is identified as suspicious,      23 pended, and should be investigated      24 further."</p>	<p>1 A. I believe they were.      2 Q. Do you know what these      3 formulas mean?</p> <p>4 A. Not in any great detail.      5 Q. Did you ever sit down with      6 anybody and ask them that question, what      7 do these formulas mean?</p> <p>8 A. I defer you to the expertise      9 of our DEA consultant.</p> <p>10 Q. My question is did you ever      11 sit down with anybody and ask them, what      12 do these formulas mean?</p> <p>13 MS. MILLER: Objection.</p> <p>14 THE WITNESS: I don't      15 recall.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. Go to the next page, Page 6.      18 Highlight that page.</p> <p>19 Do you know what these      20 formulas are?</p> <p>21 A. Same answer as the previous      22 page.</p> <p>23 Q. Were they implemented into      24 the software for suspicious order</p>
<p>1 Do you see that?</p> <p>2 A. I do see that.</p> <p>3 Q. Okay. Do you know what that      4 means?</p> <p>5 A. Not at this time, no.</p> <p>6 Q. Okay. Did you know what it      7 meant at that time?</p> <p>8 A. I really can't recall.</p> <p>9 Q. Turn to Page 4 of that      10 document.</p> <p>11 MR. BAKER: Highlight      12 everything on that page.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Okay. Can you tell us what      15 these formulas mean?</p> <p>16 A. No.</p> <p>17 Q. Can you tell us if these      18 formulas were implemented into that      19 suspicious order monitoring software?</p> <p>20 A. I was told they were.</p> <p>21 Q. Go to the next page, Page 5.      22 Do you see these formulas right here?      23 Were these formulas implemented into that      24 software?</p>	<p>1 monitoring?</p> <p>2 A. As I mentioned previously, I      3 believe they may have been.</p> <p>4 Q. Who was in charge of dealing      5 with this company, other than you insofar      6 as the retunement of this program?</p> <p>7 MS. MILLER: Objection.</p> <p>8 BY MR. BAKER:</p> <p>9 Q. Who?</p> <p>10 A. As I can recall, it would      11 have been -- Mr. Mortelliti would have      12 been involved and we also probably had      13 some of our IT people involved also.</p> <p>14 Q. Okay. The suspicious order      15 monitoring program was run out of the      16 department of logistics and loss      17 prevention at some point, was it not?</p> <p>18 A. When you say run out of, the      19 actual software?</p> <p>20 Q. The suspicious order      21 monitoring program was assigned by CVS to      22 what department within CVS when you were      23 employed there?</p> <p>24 A. As far -- I don't know your</p>

<p style="text-align: right;">Page 210</p> <p>1 terminology of "assign." I mean, we --      2 we were involved in implementing this      3 portion of the SOM program.      4 Q. Okay. "We were involved,"      5 meaning what? Your department?      6 A. Yes.      7 Q. Okay. And were you the      8 director of that department?      9 A. Yes, I was.      10 Q. Was there anybody over you?      11 Besides being the director, is there any      12 position over you in that department?      13 A. There are multiple, yes.      14 Q. Okay. Who was just above      15 you?      16 A. Judy Hughes.      17 Q. And who was just above her?      18 A. At that time there were some      19 changes in management. It could have      20 been Ernie Deyle. It could have been      21 Mike Silveira.      22 Q. Okay. And so far as having      23 direct involvement with your department      24 with this company, was there anybody more</p>	<p style="text-align: right;">Page 212</p> <p>1 score of .15 or higher is identified as      2 suspicious, pended, and should be      3 investigated further"?      4 Is that what the document      5 says?      6 A. That is what the document      7 says. I would not use that terminology.      8 Q. Is that consistent with the      9 same scoring system that was used for the      10 2008 model before it was retuned in 2011?      11 A. I have no idea.      12 Q. Let me show you Exhibit      13 Number 56.      14 (Document marked for      15 identification as Exhibit      16 CVS-Devlin-P-56.)      17 BY MR. BAKER:      18 Q. All right. This is a      19 memorandum to Frank Devlin from John      20 Mortelliti dated August 13, 2010. Do you      21 see that?      22 A. Yes.      23 Q. Okay. It says, "The      24 following information is a breakdown of</p>
<p style="text-align: right;">Page 211</p> <p>1 directly involved than you?      2 A. John Mortelliti was very      3 involved, and given the implementation of      4 the algorithm into our systems, our IT      5 people would have been fairly involved      6 also.      7 Q. Okay. Let's go to the last      8 page of this document where it talks      9 about model coefficients.      10 Do you see that?      11 Do you know what model      12 coefficients are?      13 A. I don't recall.      14 Q. Okay. You just know from      15 looking at this program that it was      16 designed to pend an order at a score of      17 .15 according to the document; is that      18 right?      19 MS. MILLER: Objection.      20 BY MR. BAKER:      21 Q. Well, look at the document.      22 Let me read the document. Does this      23 document say this model -- "The model has      24 been designed so that any order with a</p>	<p style="text-align: right;">Page 213</p> <p>1 the tested results for the control drug      2 IRR as well as the plan of action to      3 incorporate the control drug IRR into a      4 permanent SOP."      5 Do you see that?      6 A. Yes.      7 Q. Okay. And it says,      8 "Completed as of 8/13/10. The control      9 drug IRR score of .15 has been tested by      10 John Mortelliti, Lumberton distribution      11 center," correct?      12 MS. MILLER: Objection.      13 THE WITNESS: That's what it      14 states.      15 MR. BAKER: What's the      16 objection? What -- what did I      17 state wrong?      18 MS. MILLER: Well, you --      19 you said the control --      20 MR. BAKER: Okay.      21 MS. MILLER: -- drug IRR      22 score. You are reading the      23 document but --      24 BY MR. BAKER:</p>

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<p>1 Q. Complete -- completed as of      2 8/13/2010. The document says, "Control      3 drug IRR of .15 has been tested by John      4 Mortelliti," correct?      5 That's what it says,      6 correct?      7 A. That's what it says.      8 Q. And it has, paren, Lumberton      9 distribution center, correct?      10 A. Correct.      11 Q. And is that when he was      12 reviewing the IRRs by himself?      13 A. It may have been.      14 Q. Okay. And then the next      15 bullet down says, "It was determined that      16 adjustment to the IRR score needed to be      17 made to reduce the number of items      18 falsely pending, flagged."      19 Is that what it says? Is      20 that what it says?      21 A. It appears to be.      22 Q. Okay. It says, "The team      23 determined that there were no items under      24 .65 in need of an investigation,"</p>	<p>1 Mortelliti to Devlin, do you see that?      2 A. At the top of the page?      3 Q. Yes, sir.      4 A. Yes.      5 Q. It says, "Frank, I want to      6 be sure I am playing by the rules on      7 this. I don't want to waste money doing      8 a retune if we don't need one. I am not      9 even sure if a retune would be needed      10 since the report seems to be working well      11 at the new score."      12 Do you see that?      13 A. I do see that.      14 Q. Okay. The new score was      15 .65, was it not?      16 MS. MILLER: Objection.      17 THE WITNESS: I --      18 BY MR. BAKER:      19 Q. What was the new score?      20 MS. MILLER: Objection.      21 BY MR. BAKER:      22 Q. Sir?      23 A. I have no idea.      24 Q. Okay. At this new score,</p>
<p>1 correct?      2 A. That's what it states.      3 Q. And then it says, "The IRR      4 score was eventually adjusted to .65."      5 Is that what it says?      6 A. That's what it states.      7 Q. Okay. Were you involved at      8 all with the adjustment of that score      9 from .15 to .1 -- to .165?      10 A. I may have been on      11 conference call with the Buzzeo team. I      12 would defer to the expertise of the      13 Buzzeo statisticians.      14 Q. Okay.      15 (Document marked for      16 identification as Exhibit      17 CVS-Devlin-P-95.)      18 BY MR. BAKER:      19 Q. Let me show you Exhibit      20 Number 95.      21 This is an e-mail -- a      22 series of e-mails where it's talking      23 about, if you go to the third page. Go      24 to the third page. Do you see 7/26/10,</p>	<p>1 once it reached this new score that's      2 being discussed here, did you report any      3 suspicious orders to the DEA based upon      4 this program, ever?      5 MS. MILLER: Objection.      6 BY MR. BAKER:      7 Q. Did you?      8 A. I don't recall.      9 Q. Do you remember reporting      10 one, ever reporting one yourself?      11 A. I did not.      12 Q. All right. Let's go to the      13 second page. Do you see on June 30,      14 2010, John Mortelliti is writing an      15 e-mail regarding an SOM update, at the      16 bottom?      17 A. Yes.      18 Q. Do you see that?      19 A. I see that.      20 Q. It says from John Mortelliti      21 to Robert Williamson. It says, "Bob, I      22 will review" -- "I will be reviewing the      23 data for the next few weeks and testing      24 some of the pending items with field loss</p>

<p style="text-align: right;">Page 218</p> <p>1 prevention. I'm going to focus on the 2 .15 score for starters."</p> <p>3 Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Was that the score 6 that the system was initially delivered 7 and designed to pend orders at, .15?</p> <p>8 MS. MILLER: Objection.</p> <p>9 Asked and answered.</p> <p>10 THE WITNESS: I would have 11 to go back and look at documents 12 to -- if you have the actual 13 document that was delivered.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. To the best of your 16 recollection, is that the score?</p> <p>17 A. I can't -- I don't know.</p> <p>18 Q. Okay. And then it talks 19 about movement of that score. If you 20 look at the first page. Do you see where 21 it is? First page, John Mortelliti to 22 Robert Williamson?</p> <p>23 A. Yes.</p> <p>24 MS. MILLER: The first page</p>	<p style="text-align: right;">Page 220</p> <p>1 after the July 26, 2010, 1:56 p.m. e-mail 2 was sent that says, ".65 is where we are 3 now. .70 looks a bit more realistic but 4 I still want to view data."</p> <p>5 And this is the response.</p> <p>6 Do you see it?</p> <p>7 A. Which Bates number are you 8 on?</p> <p>9 Q. I'm on Bates Number 88735.</p> <p>10 Do see the response in the 11 middle of the e-mail?</p> <p>12 MS. MILLER: Give him a 13 minute to -- to navigate these 14 documents, please, sir.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. At the top of the page. Do 17 you see it?</p> <p>18 MS. MILLER: I don't see 19 where you are either.</p> <p>20 THE WITNESS: Where are you 21 referencing?</p> <p>22 BY MR. BAKER:</p> <p>23 Q. I'm pointing to it.</p> <p>24 MS. MILLER: I know, but</p>
<p style="text-align: right;">Page 219</p> <p>1 of?</p> <p>2 MR. BAKER: Of this 3 document.</p> <p>4 MS. MILLER: Can you give me 5 the Bates number?</p> <p>6 MR. BAKER: 88523.</p> <p>7 BY MR. BAKER:</p> <p>8 Q. July 26, 2010. Do you see 9 it?</p> <p>10 Do you see it?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. It says, ".65 is 13 where we are now. .70 looks a bit more 14 realistic, but I want to view data."</p> <p>15 Do you see that?</p> <p>16 A. I do see that.</p> <p>17 Q. Was there an attempt to try 18 to move the score above .65 at one point, 19 that you're aware of?</p> <p>20 A. I don't recall.</p> <p>21 Q. Okay. Now go to the second 22 to the last page of those documents that 23 are in front of you. This is an e-mail, 24 July 26, 2010, at 2:01 p.m. And this is</p>	<p style="text-align: right;">Page 221</p> <p>1 what's the Bates label?</p> <p>2 MR. BAKER: The Bates label 3 is 88735.</p> <p>4 MS. MILLER: 735. Okay.</p> <p>5 THE WITNESS: And what are 6 you asking me to look at?</p> <p>7 BY MR. BAKER:</p> <p>8 Q. Do you see what the response 9 is?</p> <p>10 A. At the top of the page, yes, 11 I do.</p> <p>12 Q. Okay. It says, "That's 13 quite a departure from the initial 14 threshold."</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. Okay. So let's read this in 18 context. The e-mail on the front page, 19 go back to the front page. This is an 20 e-mail dated July 26, 2010, at 1:56 p.m. 21 from John Mortelliti to Robert 22 Williamson. Do you see that?</p> <p>23 A. Yes, sir.</p> <p>24 Q. Okay. Does it say, ".65 is</p>

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<p>1 where we are now, .70 looks a bit more      2 realistic but I still want to view data"?      3 Is that what that says?      4 A. Yes, it is.      5 Q. Okay. Now let's look at the      6 response, July 26, 2010, at 2:01 p.m.      7 from Robert Williamson to John      8 Mortelliti. Do you see that?      9 A. Yes.      10 Q. It says, "That's quite a      11 departure from the initial threshold."      12 Is that what it says?      13 A. That is what the document      14 states, yes.      15 Q. Okay. And to the best of      16 your recollection, was .15 the initial      17 threshold score?      18 MS. MILLER: Objection.      19 Asked and answered.      20 BY MR. BAKER:      21 Q. Sir, is that what it was?      22 A. I don't recall.      23 MS. MILLER: Objection.      24 Asked and answered.</p>	<p>1 THE WITNESS: From a      2 conceptual standpoint I had an      3 idea. But the inner workings or      4 the statistical formulas, that was      5 not my area of expertise and      6 that's why we deferred to the      7 outside consultants to ensure that      8 we were putting forth a program      9 that -- that met requirements.      10 BY MR. BAKER:      11 Q. What was the method that you      12 were approving for use to determine      13 whether or not an order from a CVS      14 pharmacy to a CVS distribution center      15 would be considered to be a suspicious      16 order?      17 MS. MILLER: Objection.      18 BY MR. BAKER:      19 Q. What was it?      20 A. At what point in time?      21 Q. 2011. Let's take 2011 for      22 instance.      23 A. Well, there would be, I      24 guess from a -- the terminology would be</p>
<p>1 BY MR. BAKER:      2 Q. You don't recall. Okay.      3 Do you even know how the      4 software program worked?      5 MS. MILLER: Objection.      6 BY MR. BAKER:      7 Q. Do you?      8 MS. MILLER: Objection.      9 BY MR. BAKER:      10 Q. Answer the question. Do you      11 know how the software program worked?      12 MS. MILLER: Objection.      13 THE WITNESS: I'm not an IT      14 person.      15 BY MR. BAKER:      16 Q. Listen to my question.      17 It's -- it's like a yes or a no answer.      18 If you say, "I'm not an IT person," that      19 does not answer the question. Here is      20 the question:      21 Do you know how that      22 software program worked? Do you know?      23 MS. MILLER: Objection.      24 You can answer the question.</p>	<p>1 potentially suspicious.      2 Certainly the      3 algorithm/software, more of algorithm,      4 developed by the Buzzeo team, was a      5 component of it.      6 We also had, you know,      7 processes within the distribution centers      8 as far as hourly employees that were      9 fulfilling the orders, the pharmacy      10 supervisors in the distribution centers      11 of being aware of any excessive order      12 quantities that were taking place. Also      13 had the prescription drug monitoring      14 report. That was also out there.      15 And I believe I was not      16 involved in it at all, but I know there      17 was -- or I believe there was training      18 taking place by individual pharmacists      19 and pharmacy techs within the stores      20 trying to -- you know, just alerting      21 people to be on the lookout for      22 potentially suspicious orders.      23 Q. And how did you define a      24 suspicious order in 2011?</p>

<p style="text-align: right;">Page 226</p> <p>1 MS. MILLER: Objection.</p> <p>2 THE WITNESS: It was a whole</p> <p>3 investigative process.</p> <p>4 BY MR. BAKER:</p> <p>5 Q. Was there any set definition</p> <p>6 that you used or that you knew was being</p> <p>7 implemented by CVS to be used to identify</p> <p>8 a suspicious order in 2011?</p> <p>9 A. I don't recall a set</p> <p>10 definition. I know there are I think</p> <p>11 even from the DEA standpoint, and again,</p> <p>12 I can't quote the exact regulation, there</p> <p>13 are a variety of components that go into</p> <p>14 a potentially suspicious order.</p> <p>15 Q. Let me show you Exhibit 68.</p> <p>16 (Document marked for</p> <p>17 identification as Exhibit</p> <p>18 CVS-Devlin-P-68.)</p> <p>19 BY MR. BAKER:</p> <p>20 Q. Go ahead and grab it, if you</p> <p>21 will.</p> <p>22 All right. This is an</p> <p>23 e-mail from Frank Devlin. That's you,</p> <p>24 right?</p>	<p style="text-align: right;">Page 228</p> <p>1 MS. MILLER: And, Frank,</p> <p>2 take a moment to read the document</p> <p>3 if you'd like.</p> <p>4 BY MR. BAKER:</p> <p>5 Q. That's what this is called,</p> <p>6 right?</p> <p>7 A. That's the heading of Bates</p> <p>8 number 7737, correct.</p> <p>9 Q. Let me direct your attention</p> <p>10 down to, "Process of identifying</p> <p>11 suspicious orders." Please look.</p> <p>12 Mr. Devlin, please look at this right</p> <p>13 here. "Process of identifying suspicious</p> <p>14 orders."</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. Okay. Could you read for us</p> <p>18 what it says right there, the first</p> <p>19 sentence.</p> <p>20 A. "In order to determine which</p> <p>21 items on the control IRR report are</p> <p>22 suspicious, the order quantity field is</p> <p>23 observed by the DC IRR analyst for a</p> <p>24 quantity ordered of ten or more."</p>
<p style="text-align: right;">Page 227</p> <p>1 A. It is.</p> <p>2 Q. To Judith Hughes, 5/16/11.</p> <p>3 And the subject is "Control drug</p> <p>4 suspicious order monitoring," correct?</p> <p>5 A. That appears to be the</p> <p>6 subject, yes.</p> <p>7 Q. Okay. Turn to the next</p> <p>8 page. Now, you see at the bottom of the</p> <p>9 first page -- let's make sure we are</p> <p>10 correct. Go back to the first page. The</p> <p>11 e-mail. All right. The Bates number at</p> <p>12 the bottom of that is 57736.</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Okay. Now, go to the next</p> <p>16 page, look at the Bates number at the</p> <p>17 bottom. It's 57737, correct?</p> <p>18 A. Correct.</p> <p>19 Q. The Bates number of the next</p> <p>20 page is 57738, correct?</p> <p>21 A. Correct.</p> <p>22 Q. All right. Now, go back to</p> <p>23 57737, this is called, "Components of the</p> <p>24 control IRR report," correct?</p>	<p style="text-align: right;">Page 229</p> <p>1 Q. The next sentence.</p> <p>2 A. "The month-to-date field is</p> <p>3 then observed and compared to Lags 1, 2,</p> <p>4 and 3."</p> <p>5 Q. The next sentence?</p> <p>6 A. "If the month-to-date</p> <p>7 quantity is at least three times greater</p> <p>8 than the quantities in Lags 1, 2, or 3,</p> <p>9 then that item is labeled as being</p> <p>10 suspicious."</p> <p>11 Q. Okay. Is that the</p> <p>12 definition of a suspicious order that you</p> <p>13 were using in 2011?</p> <p>14 MS. MILLER: Objection.</p> <p>15 THE WITNESS: I don't -- I</p> <p>16 can't recall the exact definition</p> <p>17 of suspicious, and even, you know,</p> <p>18 from a documentation standpoint, I</p> <p>19 don't see a date on this document.</p> <p>20 And I know, as far as the</p> <p>21 evolution of our process goes, the</p> <p>22 term "suspicious order," that was</p> <p>23 not being properly used.</p> <p>24 BY MR. BAKER:</p>

<p>1 Q. Okay.</p> <p>2 A. And it should have been</p> <p>3 "potentially suspicious." And later on</p> <p>4 as our program evolved, we deferred to</p> <p>5 that, so the suspicious term is -- this</p> <p>6 is -- in this document, that is not being</p> <p>7 used properly.</p> <p>8 Q. This document says that you</p> <p>9 define a suspicious order as one that</p> <p>10 meets that criteria that you just read,</p> <p>11 correct?</p> <p>12 MS. MILLER: Objection.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Let's read it again. This</p> <p>15 process of identifying suspicious orders</p> <p>16 says, "In order to determine which items</p> <p>17 on the control IRR report are suspicious,</p> <p>18 the order quantity field is observed by</p> <p>19 the DC IRR analyst for a quantity ordered</p> <p>20 of ten or more. The month-to-date field</p> <p>21 is then observed and compared to Lags 1,</p> <p>22 2, and 3. If the month-to-date quantity</p> <p>23 is at least three times greater than the</p> <p>24 quantities in Lags 1, 2, or 3, then that</p>	<p>Page 230</p> <p>1 order monitoring, the IRR report and the</p> <p>2 process of identifying suspicious orders,</p> <p>3 is it not?</p> <p>4 A. According to the e-mail, but</p> <p>5 I -- also I don't see any date on Bates</p> <p>6 Number 737 or 738.</p> <p>7 Q. Okay.</p> <p>8 A. I'm not sure of time and</p> <p>9 place this would have been in place.</p> <p>10 Q. Okay. Let's skip up a</p> <p>11 paragraph. Okay. Let's define what lags</p> <p>12 are, okay.</p> <p>13 Go down here. It says,</p> <p>14 "Component of the control drug" -- "of</p> <p>15 the control IRR report."</p> <p>16 It then talks about what</p> <p>17 lags are. It says, "The month-to-date</p> <p>18 order quantity" -- do you see this right</p> <p>19 here? "The month to date order</p> <p>20 quantity."</p> <p>21 MS. MILLER: Can you direct</p> <p>22 him to where you are in the</p> <p>23 document, Bill?</p> <p>24 MR. BAKER: Yeah. I'm right</p>
<p>1 item is labeled as being suspicious."</p> <p>2 Did I read that correctly?</p> <p>3 A. You read what's on the</p> <p>4 document, yes.</p> <p>5 Q. Okay. And this, of course,</p> <p>6 deals with the components of the control</p> <p>7 IRR report and the process of identifying</p> <p>8 suspicious orders, correct?</p> <p>9 MS. MILLER: Objection.</p> <p>10 THE WITNESS: All I can read</p> <p>11 is what's on the document. I</p> <p>12 mean, when I look at the header of</p> <p>13 the e-mail on 736 --</p> <p>14 BY MR. BAKER:</p> <p>15 Q. I'm just reading the headers</p> <p>16 of this document in this e-mail that's</p> <p>17 attached sequentially in Bates sequence.</p> <p>18 Do you see that?</p> <p>19 A. I do. But I just -- I also</p> <p>20 notice that the subject is "Control drug</p> <p>21 suspicious order monitoring," and then</p> <p>22 when I look at this document, I don't see</p> <p>23 that title being used anywhere.</p> <p>24 Q. This is part of suspicious</p>	<p>Page 231</p> <p>1 here.</p> <p>2 THE WITNESS: Right where?</p> <p>3 MS. MILLER: Where in the</p> <p>4 paragraph?</p> <p>5 MR. BAKER: Where my finger</p> <p>6 is.</p> <p>7 THE WITNESS: Month-to-date</p> <p>8 order quantity. Okay.</p> <p>9 BY MR. BAKER:</p> <p>10 Q. Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. "The month-to-date order</p> <p>13 quantity states the amount of the item in</p> <p>14 question ordered during the current</p> <p>15 month. Lag 1 is the amount ordered the</p> <p>16 month before, Lag 2 is the amount ordered</p> <p>17 two months before, and Lag 3 is the</p> <p>18 amount ordered three months before."</p> <p>19 Do you see that?</p> <p>20 A. Yes, sir.</p> <p>21 Q. Is that what lags meant at</p> <p>22 CVS?</p> <p>23 A. I would just -- I guess I</p> <p>24 could defer to this document. I mean I</p>

<p style="text-align: right;">Page 234</p> <p>1 just -- I don't recall. I don't recall 2 the definition of lags. 3 Q. Okay. Let's see if we can 4 take it in context, okay. 5 Lag 1 is the amount ordered 6 the month before. Would that be the 7 month before the current order? 8 MS. MILLER: Objection. 9 THE WITNESS: I can't 10 interpret it. I mean, I can just 11 go off of what the document says. 12 BY MR. BAKER: 13 Q. Lag 2 is the amount ordered 14 two months before. Is that talking about 15 the amount of control drugs ordered two 16 months before the current month's order? 17 A. That's what the document 18 states. 19 Q. Okay. Lag 3 is the amount 20 ordered three months before. Does that 21 mean the amount of controlled substances 22 that were ordered three months before the 23 current controlled substance order? 24 A. Again, that's what the</p>	<p style="text-align: right;">Page 236</p> <p>1 have been as "potentially suspicious." 2 Q. Okay. Did you ever recall 3 this document? 4 MS. MILLER: Objection. 5 BY MR. BAKER: 6 Q. Did you ever recall it and 7 have it edited? 8 A. I don't -- I didn't even 9 recall seeing this document to begin 10 with. 11 Q. If you use that formula, 12 then technically what that would mean, if 13 you look at it -- let's see if we can 14 break this down. And I want you to 15 explain what this means. If you're 16 talking about Lags 1, 2, and 3. We're 17 talking about the first, second and third 18 month before the current order. Is that 19 accurate or not? 20 MS. MILLER: Objection. 21 Asked and answered. He's already 22 testified that he doesn't remember 23 the document. 24 BY MR. BAKER:</p>
<p style="text-align: right;">Page 235</p> <p>1 document states. 2 Q. Okay. Then skip down. 3 "In order to determine which 4 items on the control drug IRR report are 5 suspicious, the order quantity field is 6 observed by the DC IRR analyst for a 7 quantity ordered of ten or more. The 8 month-to-date field is then observed and 9 compared to Lags 1, 2, and 3. If the 10 month-to-date quantity is at least three 11 times greater than the quantities in Lags 12 1, 2, or 3, then that item is labeled as 13 being suspicious." 14 Is that what it says? 15 A. That is what it says, but 16 again, I would dispute the language being 17 used in the document. 18 Q. You would dispute the 19 language. But the document says what it 20 says? 21 A. The document says what it 22 says. But as I mentioned earlier, there 23 was an evolution, and it's the 24 terminology being used, and it should</p>	<p style="text-align: right;">Page 237</p> <p>1 Q. Would that be an accurate 2 interpretation of what that says? 3 MS. MILLER: Objection. 4 Asked and answered. 5 THE WITNESS: All I can do 6 in this situation is defer to 7 what's on this document. 8 BY MR. BAKER: 9 Q. I agree. You can defer to 10 what's in the document. I'm trying to 11 break it down. 12 A. I can't. I can't. If 13 you're -- you know, if you're asking me 14 is this in fact what was in place, I do 15 not recall if that is in fact what was in 16 place. 17 Q. Okay. 18 A. It's what's written on this 19 document, is what's written on this 20 document. 21 Q. Okay. So when you said I 22 don't recall if that's what was in place, 23 does that mean that you can't recall one 24 way or the other if that's what's in</p>

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<p>1 place?</p> <p>2 MS. MILLER: Objection.</p> <p>3 THE WITNESS: You know --</p> <p>4 BY MR. BAKER:</p> <p>5 Q. If you don't recall, you</p> <p>6 don't recall. But tell me, do you recall</p> <p>7 one way or the other if that's what was</p> <p>8 in place?</p> <p>9 MS. MILLER: Objection.</p> <p>10 THE WITNESS: All I -- I</p> <p>11 know from my -- my position, you</p> <p>12 know, and really from a project</p> <p>13 manager position of having -- you</p> <p>14 know, ensuring we have a</p> <p>15 suspicious order monitoring in</p> <p>16 place, that we had -- you know, we</p> <p>17 leveraged outside consultants who</p> <p>18 were DEA experts. They delivered</p> <p>19 a product to us. We implemented</p> <p>20 that product. You know, my role</p> <p>21 to ensure was it implemented, was</p> <p>22 it in place, was it being</p> <p>23 reviewed. And I ensured all of</p> <p>24 that was taking place.</p>	<p>1 IRR reports, is to look at that lag</p> <p>2 formula, the three times lag formula?</p> <p>3 MS. MILLER: Objection.</p> <p>4 Asked and answered. He's already</p> <p>5 testified he does not recall.</p> <p>6 MR. BAKER: Okay. See, I</p> <p>7 don't mind if you say, "Object to</p> <p>8 form," but that -- that steps over</p> <p>9 where you are supposed to object.</p> <p>10 If you'd please not do that, I'd</p> <p>11 appreciate it.</p> <p>12 BY MR. BAKER:</p> <p>13 Q. So let me ask this. Was</p> <p>14 this formula used in the context of</p> <p>15 reviewing IRRs when you were at CVS?</p> <p>16 MS. MILLER: Objection.</p> <p>17 BY MR. BAKER:</p> <p>18 Q. Was it used?</p> <p>19 MS. MILLER: Objection.</p> <p>20 THE WITNESS: There was a</p> <p>21 formula in place.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Okay. And this was the</p> <p>24 formula?</p>
<p>1 The details around it,</p> <p>2 around the lags, and whatnot, I</p> <p>3 just -- you know, I'm not a</p> <p>4 subject matter expert on the</p> <p>5 algorithm that was presented.</p> <p>6 BY MR. BAKER:</p> <p>7 Q. All right. Is that formula</p> <p>8 consistent or inconsistent with the</p> <p>9 algorithm or do you know?</p> <p>10 MS. MILLER: Objection.</p> <p>11 He's already testified that he</p> <p>12 doesn't remember the document.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Okay. Just --</p> <p>15 A. I don't -- I don't recall.</p> <p>16 Q. You don't know, you don't</p> <p>17 recall.</p> <p>18 Was this formula being used</p> <p>19 instead of the algorithm?</p> <p>20 MS. MILLER: Objection.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. In the context of reviewing</p> <p>23 IRR reports, is that -- is that the</p> <p>24 process of what was being done to review</p>	<p>1 A. I do not know if this was</p> <p>2 the formula.</p> <p>3 Q. Okay. Did you ever ask</p> <p>4 anybody if this was the formula that was</p> <p>5 being used?</p> <p>6 MS. MILLER: Objection.</p> <p>7 THE WITNESS: I don't</p> <p>8 recall.</p> <p>9 BY MR. BAKER:</p> <p>10 Q. Do you know why that was</p> <p>11 even typed up in the context of CVS</p> <p>12 documentation?</p> <p>13 MS. MILLER: Objection.</p> <p>14 THE WITNESS: I do not</p> <p>15 recall.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. Do you know who came up with</p> <p>18 that formula?</p> <p>19 MS. MILLER: Objection.</p> <p>20 BY MR. BAKER:</p> <p>21 Q. The lag formula that we just</p> <p>22 discussed?</p> <p>23 A. I do not.</p> <p>24 MR. BAKER: I think it's</p>

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<p>1 time to break for lunch. Do you      2 want to try to take, what,      3 30 minutes?</p> <p>4 THE WITNESS: Ten minutes?</p> <p>5 MR. BAKER: For lunch?</p> <p>6 MS. MILLER: No. 30 minutes      7 would be great.</p> <p>8 THE VIDEOGRAPHER: Off the      9 record. The time is 12:29.</p> <p>10 (Lunch break.)</p> <p>11 THE VIDEOGRAPHER: We're      12 going back on record. Beginning      13 of Media File Number 6. The time      14 is 1:14.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. Mr. Devlin, we just took a      17 lunch break, correct?</p> <p>18 A. Yes.</p> <p>19 Q. Okay. I was going over      20 Document Number 68 with you before we      21 left for lunch. We were going over that      22 formula that we were talking about.</p> <p>23 Do you remember the lag      24 formula, the Lag 1, 2, 3?</p>	<p>1 e-mail dated 1/28/11. Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. All right. And this is an      4 e-mail from Steven Cain to Frank Devlin,      5 and then it's talking about IRR      6 narratives. And then below that, an      7 e-mail dated January 27, 2011, you, Frank      8 Devlin, to Steven Cain regarding the IRR      9 narratives.</p> <p>10 Do you see that?</p> <p>11 A. I do.</p> <p>12 Q. Okay. Would you turn next      13 to the page that talks about those IRR      14 narratives. It talks about the      15 components of the IRR -- of the control      16 IRR report, correct?</p> <p>17 A. That's what it states.</p> <p>18 Q. Okay. Do you remember this      19 document at all?</p> <p>20 A. I really don't recall it.</p> <p>21 Q. You don't recall it?</p> <p>22 A. No.</p> <p>23 Q. Okay. Go to Page 2 of that      24 document. It talks about the suspicious</p>
<p>1 MS. MILLER: Objection.</p> <p>2 BY MR. BAKER:</p> <p>3 Q. Do you remember Document      4 Number 68, Exhibit 68, that we were going      5 over?</p> <p>6 A. I recall, yes.</p> <p>7 Q. Okay. Let me show you      8 Exhibit Number 68-A.</p> <p>9 (Document marked for      10 identification as Exhibit      11 CVS-Devlin-P-68-A.)</p> <p>12 MR. BAKER: Let me go off      13 record for just a second.</p> <p>14 THE VIDEOGRAPHER: We're      15 going off record. The time is      16 1:15.</p> <p>17 (Brief pause.)</p> <p>18 THE VIDEOGRAPHER: Going      19 back on record. Beginning of      20 Media File Number 7. The time is      21 1:17.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Okay. Mr. Devlin, would you      24 look at 68-A please. It starts with an</p>	<p>1 order process. This is another formula      2 that I'm going to ask you about. It      3 says, bullet -- "Bullet Number 1, the DC      4 IRR analyst will review IRR for order      5 quantity that is flagged as potentially      6 suspicious."</p> <p>7 Do you see that?</p> <p>8 MS. MILLER: Objection.</p> <p>9 Formula, you said the word      10 "formula."</p> <p>11 MR. BAKER: Okay.</p> <p>12 BY MR. BAKER:</p> <p>13 Q. Let me ask you what this      14 document says. "Suspicious order      15 process. Bullet Number 1, DC IRR analyst      16 will review IRRs for order quantity that      17 has flagged as potentially suspicious."</p> <p>18 Is that what it says?</p> <p>19 A. That's what it says.</p> <p>20 Q. Okay. Now let's talk about      21 that. An IRR is an item review report,      22 correct?</p> <p>23 A. Yes.</p> <p>24 Q. Flagged means what?</p>

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<p>1 A. That would be something that      2 you would -- you would want to take an      3 initial look at.</p> <p>4 Q. Okay. What causes it to be      5 flagged?</p> <p>6 A. I believe it would be      7 something based off of the algorithm.</p> <p>8 Q. And would the algorithm be      9 part of the software program?</p> <p>10 MS. MILLER: Objection.</p> <p>11 BY MR. BAKER:</p> <p>12 Q. Is the algorithm built into      13 the software program?</p> <p>14 MS. MILLER: Objection.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. What is the algorithm?</p> <p>17 A. I don't recall the      18 algorithm.</p> <p>19 Q. What is that in the context      20 of the software program?</p> <p>21 MS. MILLER: Objection.</p> <p>22 MR. BAKER: Look, I'm just      23 trying to get through this without      24 a lot of interruption. And I want</p>	<p>1 all that kind of business. It's baloney,      2 and you know it.</p> <p>3 So let's -- let's go      4 through --</p> <p>5 MS. MILLER: Mr. Baker,      6 Mr. Baker, respectfully, he      7 doesn't need to be lectured --</p> <p>8 MR. BAKER: Well, he does,      9 because he's intentionally      10 avoiding the questions.</p> <p>11 MS. MILLER: -- he's      12 testifying to the best of his      13 recollection.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. Okay. So here we go. Look      16 at the document. Suspicious order      17 process. Do you see it?</p> <p>18 Do you see it with your      19 eyeballs?</p> <p>20 MS. MILLER: Objection.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Do you see it?</p> <p>23 A. Which Bates number are you      24 referencing?</p>
<p>1 to make sure that I get this on      2 record what he's talking about      3 with an algorithm. He's in charge      4 of the doggone program.</p> <p>5 BY MR. BAKER:</p> <p>6 Q. Can you just testify about      7 the program versus "I don't remember," "I      8 don't recall," and let's get through      9 this.</p> <p>10 Can we just do that?</p> <p>11 MS. MILLER: Mr. Baker, he's      12 testifying to the best of his      13 recollection. And I'm entitled to      14 object on the record.</p> <p>15 MR. BAKER: Agreed.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. But -- but this "I don't      18 recall," "I don't know," is ridiculous      19 because you were the man in charge of the      20 department, and you contracted to get      21 this thing done.</p> <p>22 So let's try to get through      23 the questions and answers without a lot      24 of "I don't know," "I don't recall," and</p>	<p>1 Page 247</p> <p>1 Q. Suspicious order process,      2 right in front of your eyeballs, right      3 here. Do you see that?</p> <p>4 A. Which Bates number are you      5 referencing?</p> <p>6 Q. I'm looking at 83970.</p> <p>7 A. I do see that.</p> <p>8 Q. Okay. It says, "Suspicious      9 order process."</p> <p>10 Do you see those words?</p> <p>11 A. I do.</p> <p>12 Q. Okay. Read that first      13 bullet point, please?</p> <p>14 A. "DC IRR analyst will review      15 IRR for order quantity that is flagged as      16 potentially suspicious."</p> <p>17 Q. Okay. What does the word      18 "flagged" mean in the context of that      19 sentence?</p> <p>20 MS. MILLER: Objection.</p> <p>21 Asked and answered.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. What does it mean?</p> <p>24 A. I believe it would be</p>
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<p style="text-align: right;">Page 250</p> <p>1 something that, based on the algorithm,      2 it would put outside the parameters and      3 something for the IRR analyst to take a      4 look at.</p> <p>5 Q. What algorithm?</p> <p>6 A. The one provided by Buzzeo's      7 company.</p> <p>8 Q. What does that algorithm      9 have to do with the suspicious order      10 monitoring process?</p> <p>11 A. It's part of the overall      12 program.</p> <p>13 Q. And what is the score at      14 which an item is flagged as one of being      15 potentially suspicious?</p> <p>16 MS. MILLER: Objection.</p> <p>17 Asked and answered.</p> <p>18 BY MR. BAKER:</p> <p>19 Q. You don't know --</p> <p>20 MS. MILLER: Give me -- give      21 me a chance to respond.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Do -- do you know?</p> <p>24 A. Do not recall.</p>	<p style="text-align: right;">Page 252</p> <p>1 BY MR. BAKER:</p> <p>2 Q. Do you understand that?</p> <p>3 A. I understand what was in the      4 document earlier.</p> <p>5 Q. Do you remember the document      6 that I showed you, Document Number 150?</p> <p>7 MS. MILLER: Do you have      8 that in front of you, Frank?</p> <p>9 THE WITNESS: I do.</p> <p>10 BY MR. BAKER:</p> <p>11 Q. Okay. Turn to Page 3 of      12 that document, 114644. Read that      13 sentence that's highlighted for you.</p> <p>14 That's underlined.</p> <p>15 A. "The model has been designed      16 so that any order with a score of 0.15 or      17 higher is identified as suspicious,      18 pended, and should be investigated      19 further."</p> <p>20 Q. What does that mean?</p> <p>21 MS. MILLER: Objection.</p> <p>22 THE WITNESS: Sir, alls I      23 know is that was a part of the      24 algorithm. I do not recall the</p>
<p style="text-align: right;">Page 251</p> <p>1 Q. We just went through several      2 documents that talk about a .15 score.      3 Do you recall that?</p> <p>4 A. I recall seeing those      5 documents.</p> <p>6 Q. Okay. Are you saying that      7 you don't recall that .15 was the score      8 at which that program was designed to      9 flag an order?</p> <p>10 MS. MILLER: Objection.</p> <p>11 BY MR. BAKER:</p> <p>12 Q. Are you saying that?</p> <p>13 MS. MILLER: Asked and      14 answered.</p> <p>15 THE WITNESS: I do not      16 recall the components of the      17 algorithm.</p> <p>18 BY MR. BAKER:</p> <p>19 Q. Okay. I didn't ask you to      20 recall the components of the algorithm.      21 I'm asking do you recall the score at      22 which an order was to be flagged. Do you      23 understand that?</p> <p>24 MS. MILLER: Objection.</p>	<p style="text-align: right;">Page 253</p> <p>1 details of the algorithm.</p> <p>2 BY MR. BAKER:</p> <p>3 Q. What does a score of .15      4 mean?</p> <p>5 MS. MILLER: Objection.</p> <p>6 Asked and answered.</p> <p>7 THE WITNESS: I don't know.</p> <p>8 BY MR. BAKER:</p> <p>9 Q. What does "identified as      10 suspicious, pended" mean?</p> <p>11 A. Identified and pended would      12 be to take a look at for further      13 investigation.</p> <p>14 Q. Investigation of what?</p> <p>15 A. An order.</p> <p>16 Q. How is it investigated?</p> <p>17 A. A variety of steps.</p> <p>18 Q. Tell me those steps.</p> <p>19 A. The IRR analyst would take a      20 look at the flagged order and from other,      21 I guess tools at their disposal, would      22 determine if it was something that      23 required further investigation. So some      24 of those tools to be used would be</p>

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<p>1 looking at past, I guess it would be      2 looking at what is actually flagging it      3 in the model. Then it could take a look      4 at the -- having access to the      5 prescription drug monitoring report. It      6 could involve phone calls with field loss      7 prevention. It could involve discussions      8 with the store pharmacist. It could      9 involve looking at prescriptions coming      10 out of the store. Are they, I guess,      11 outside normal parameters from perhaps      12 comparable stores. There's a variety of      13 components and I'm probably not touching      14 upon all of them.</p> <p>15 Q. And that's to be done by      16 the -- who?</p> <p>17 A. That would be the IRR      18 analyst.</p> <p>19 Q. Okay. And the IRR analyst      20 would be who in 2011?</p> <p>21 A. I believe in 2011 it would      22 have been a person based in Knoxville.</p> <p>23 Q. And who was that?</p> <p>24 A. I didn't recall her name.</p>	<p>1 Q. Go ahead.      2 A. What's the definition of due      3 diligence?      4 Q. I'm asking you. You're the      5 former CVS director of loss prevention --      6 of logistics and loss prevention. I'm      7 asking you, what was due diligence in the      8 context of suspicious order monitoring      9 investigations of pended orders?</p> <p>10 A. That's not a term that I can      11 recall using.</p> <p>12 Q. You never used that term?</p> <p>13 A. I don't recall using due      14 diligence.</p> <p>15 Q. Fair enough. Would you have      16 had any expectation that the person      17 conducting that review would use due      18 diligence in the context of their review?</p> <p>19 MS. MILLER: Objection.</p> <p>20 BY MR. BAKER:</p> <p>21 Q. Would you?</p> <p>22 A. I would expect the person      23 would investigate the situation.</p> <p>24 Q. Would you expect the person</p>
Page 255	Page 257
<p>1 Q. And was that process that      2 you just talked about, is that called due      3 diligence?</p> <p>4 A. I would -- I know I'm not      5 touching upon all of it, but that would      6 be from what I can recall.</p> <p>7 Q. Is that called due      8 diligence?</p> <p>9 MS. MILLER: Objection.</p> <p>10 THE WITNESS: I don't recall      11 using that terminology.</p> <p>12 BY MR. BAKER:</p> <p>13 Q. What is due diligence in the      14 context of suspicious order monitoring?</p> <p>15 MS. MILLER: Objection.</p> <p>16 THE WITNESS: I didn't use      17 that terminology.</p> <p>18 BY MR. BAKER:</p> <p>19 Q. Would you have any      20 expectation that the person conducting      21 that review used due diligence?</p> <p>22 MS. MILLER: Objection.</p> <p>23 THE WITNESS: What's the --</p> <p>24 BY MR. BAKER:</p>	<p>1 to do that list of things that you just      2 listed?</p> <p>3 A. That would probably be a      4 portion of it.</p> <p>5 Q. Okay. And if that person      6 did not do those things, would that be      7 below your expectations of what they      8 should have done, you being the director      9 of the department out of which suspicious      10 order monitoring was assigned at the      11 time?</p> <p>12 MS. MILLER: Objection.</p> <p>13 THE WITNESS: I would have      14 to have more details around the      15 situation.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. Do you know what percentage      18 of the time the person who was reviewing      19 those pended orders would conduct such an      20 investigation to the extent of what you      21 just described?</p> <p>22 MS. MILLER: Objection.</p> <p>23 THE WITNESS: I would not be      24 aware of the time involved.</p>

<p style="text-align: right;">Page 258</p> <p>1 BY MR. BAKER:</p> <p>2 Q. What percentage of the 3 pended orders would you have an 4 expectation that that person reviewing 5 the orders for investigation would 6 conduct the steps that you outlined to 7 investigate? What percentage of those 8 orders would you expect them to go 9 through and do that type of 10 investigation?</p> <p>11 MS. MILLER: Objection.</p> <p>12 THE WITNESS: I can't 13 recall. I can't recall what time 14 required.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. I didn't ask time required. 17 What percentage of the pended orders that 18 were pended would you have an expectation 19 that the analyst would then go forward 20 and do that type of an investigation? 21 What percentage number? 22 A. Sitting here, I do not 23 recall a percentage. 24 Q. Okay. Would you expect it</p>	<p style="text-align: right;">Page 260</p> <p>1 would that have been a violation of the 2 policy of how you expected them to 3 investigate that order?</p> <p>4 MS. MILLER: Objection.</p> <p>5 THE WITNESS: I would have 6 to know the circumstances of the 7 order. Not if -- it's 8 theoretical. I would need to know 9 the details.</p> <p>10 BY MR. BAKER:</p> <p>11 Q. Did you ever review any IRR 12 investigative report during the whole 13 time that you were employed at CVS?</p> <p>14 MS. MILLER: Objection.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. Did you? 17 MS. MILLER: Objection.</p> <p>18 BY MR. BAKER:</p> <p>19 Q. Let me repeat the question. 20 During the entire time that you were 21 employed at CVS, did you ever once review 22 an item review report investigative 23 report?</p> <p>24 MS. MILLER: Objection.</p>
<p style="text-align: right;">Page 259</p> <p>1 to be close to 100 percent?</p> <p>2 MS. MILLER: Objection.</p> <p>3 BY MR. BAKER:</p> <p>4 Q. I mean, you have a pended 5 order. Would you not expect the person 6 who is the analyst to do that type of 7 investigation?</p> <p>8 MS. MILLER: Objection.</p> <p>9 THE WITNESS: If --</p> <p>10 BY MR. BAKER:</p> <p>11 Q. Go ahead.</p> <p>12 A. If an -- if an order was 13 flagged, they would look into it further, 14 I would expect that to take place.</p> <p>15 Q. Okay. To the extent that 16 you just described, correct?</p> <p>17 MS. MILLER: Objection.</p> <p>18 BY MR. BAKER:</p> <p>19 Q. To the extent that you 20 described?</p> <p>21 A. A portion of what I 22 described.</p> <p>23 Q. Okay. And if the person did 24 not conduct that type of investigation,</p>	<p style="text-align: right;">Page 261</p> <p>1 BY MR. BAKER:</p> <p>2 Q. Did you? 3 MS. MILLER: Objection.</p> <p>4 THE WITNESS: I'm not sure 5 what you're referencing.</p> <p>6 BY MR. BAKER:</p> <p>7 Q. Did you ever review any 8 written documentation of an investigation 9 that was done of a pended order?</p> <p>10 A. Not that I can recall.</p> <p>11 MR. BAKER: Go to 68-A 12 again, please. Pull it up, 13 please.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. Go to Page 2, 68-A. All 16 right. The next bullet point, this says, 17 "The month-to-date field is then observed 18 and compared to Lags 1 through 6. Do you 19 see that?"</p> <p>20 A. What Bates? Actually, I 21 have the wrong document.</p> <p>22 MS. MILLER: Was it 68-A and 23 attachment?</p> <p>24 MR. BAKER: 68 -- 68-A</p>

<p style="text-align: right;">Page 262</p> <p>1 attachment.</p> <p>2 BY MR. BAKER:</p> <p>3 Q. Yes, sir. Look under</p> <p>4 suspicious order process, Page 2.</p> <p>5 A. Okay.</p> <p>6 Q. Look under Bullet Point</p> <p>7 Number 2.</p> <p>8 Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. And remember, Bullet Point</p> <p>11 Number 1, I just finished asking you</p> <p>12 about, the DC IRR analyst will review IRR</p> <p>13 for order quantity that has flagged as</p> <p>14 potentially suspicious. You recall that,</p> <p>15 correct? We just went over that, right?</p> <p>16 A. That's what you read, yes.</p> <p>17 Q. Okay. Now we're going over</p> <p>18 Bullet Point Number 2. It says, "The</p> <p>19 month-to-date field is then observed and</p> <p>20 compared to Lags 1 through 6."</p> <p>21 Do you see that?</p> <p>22 A. I see that on the document,</p> <p>23 yes.</p> <p>24 Q. Okay. It says, "If a</p>	<p style="text-align: right;">Page 264</p> <p>1 2011; is that correct? You're not</p> <p>2 doubting that today, are you?</p> <p>3 MS. MILLER: Objection.</p> <p>4 THE WITNESS: It may have</p> <p>5 been sent, but I don't recall</p> <p>6 reading it.</p> <p>7 BY MR. BAKER:</p> <p>8 Q. Okay. And why would this</p> <p>9 have been sent to you? What was your</p> <p>10 position within the company that would</p> <p>11 have caused something like this to be</p> <p>12 sent to you?</p> <p>13 MS. MILLER: Objection.</p> <p>14 THE WITNESS: I was director</p> <p>15 of logistics, loss prevention.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. And what did you as director</p> <p>18 of loss prevention -- logistics loss</p> <p>19 prevention have to do with suspicious</p> <p>20 order monitoring while you were employed</p> <p>21 at CVS? What did you do?</p> <p>22 A. I was involved in</p> <p>23 implementing the program.</p> <p>24 Q. Okay. And if you were</p>
<p style="text-align: right;">Page 263</p> <p>1 month-to-date quantity is out of line</p> <p>2 compared to the store lag, as well as the</p> <p>3 ordering patterns of the network, the</p> <p>4 order will be labeled suspicious."</p> <p>5 Do you see that?</p> <p>6 A. I do.</p> <p>7 Q. Okay. What does the phrase</p> <p>8 "out of line" mean?</p> <p>9 MS. MILLER: Objection.</p> <p>10 THE WITNESS: I didn't write</p> <p>11 this document. So I'm not sure</p> <p>12 exactly what he meant.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Well, did this document ever</p> <p>15 get brought to your attention when you</p> <p>16 worked at CVS?</p> <p>17 A. It appears that it was sent</p> <p>18 to me. But I don't recall the document.</p> <p>19 Q. Okay. And it appears that</p> <p>20 it was sent to you in February of 2011;</p> <p>21 is that right?</p> <p>22 A. Correct.</p> <p>23 Q. Okay. And you don't sit</p> <p>24 here and doubt that it was sent to you in</p>	<p style="text-align: right;">Page 265</p> <p>1 involved in implementing the program and</p> <p>2 this is a memo describing suspicious</p> <p>3 order process, and the memo says, "If a</p> <p>4 month-to-date quantity is out of line</p> <p>5 compared to the store lag as well as the</p> <p>6 ordering patterns of the network, the</p> <p>7 order will be labeled suspicious," are</p> <p>8 you telling me that you don't know what</p> <p>9 the words "out of line" means?</p> <p>10 MS. MILLER: Objection.</p> <p>11 THE WITNESS: Again, I</p> <p>12 didn't write the document. I'm</p> <p>13 not sure what the terminology</p> <p>14 means.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. Did you ever ask anybody</p> <p>17 what that means, "out of line," how</p> <p>18 that's defined?</p> <p>19 A. Sir, I don't recall the</p> <p>20 document.</p> <p>21 Q. Okay. Did you ever ask</p> <p>22 anybody what the words "out of line"</p> <p>23 mean? That's what I'm asking you.</p> <p>24 A. I do not recall.</p>

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<p>1 Q. Okay. Do you know how far      2 out of line a month-to-date quantity      3 order would have to be in order for it to      4 be considered suspicious?</p> <p>5 MS. MILLER: Objection.</p> <p>6 THE WITNESS: I don't recall      7 the term "out of line."</p> <p>8 BY MR. BAKER:</p> <p>9 Q. Did you ever review any      10 investigations, any written documentation      11 of investigations of orders that were out      12 of line when you were at CVS in that      13 department, the director of logistics,      14 loss prevention?</p> <p>15 MS. MILLER: Objection.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. Did you?</p> <p>18 MS. MILLER: Objection.</p> <p>19 THE WITNESS: Not that I      20 recall.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. During the entire time that      23 you were director of logistics loss      24 prevention at CVS, did anybody ever</p>	<p>1 A. I'm on that page.</p> <p>2 Q. Tell me when you're there.</p> <p>3 A. I am there.</p> <p>4 Q. Okay. Do you see where      5 that's entitled Prevention and Monitoring      6 of Control Drug and PSE Suspicious      7 Orders. Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. Okay. It talks about      10 prevention and -- prevention and      11 monitoring of control drug suspicious      12 orders. Do you see that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. Now, go to the -- go      15 to the bottom of that page. It says,      16 "DEA regulations require that all      17 distributors must design a system to      18 monitor, detect and report any suspicious      19 control drug orders."</p> <p>20 Do you see that?</p> <p>21 A. Yes, sir.</p> <p>22 Q. When you were at CVS did you      23 read this document?</p> <p>24 A. I just -- I don't recall the</p>
<p>1 present to you an order from a CVS      2 pharmacy to a CVS distribution center      3 that had a month-to-date quantity that      4 was out of line compared to the store      5 Lags 1 through 6 as well as the ordering      6 patterns of the network to where that      7 order was labeled as suspicious?</p> <p>8 MS. MILLER: Objection.</p> <p>9 THE WITNESS: Not that I      10 recall.</p> <p>11 MR. BAKER: Let's go to 97.</p> <p>12 MS. MILLER: Is that a new      13 exhibit?</p> <p>14 MR. BAKER: Yes.</p> <p>15 It's an existing one.</p> <p>16 MS. MILLER: Oh, right.</p> <p>17 BY MR. BAKER:</p> <p>18 Q. All right. Go to page Bates      19 Number 88996.</p> <p>20 A. Excuse me. What is the      21 Bates number?</p> <p>22 Q. 88996. Are you there?</p> <p>23 A. 88996?</p> <p>24 Q. Yes, sir.</p>	<p>1 document.</p> <p>2 Q. Okay. Go to the next page.</p> <p>3 It talks about items reviewed. Do you      4 see that?</p> <p>5 A. Yes.</p> <p>6 Q. It says, "CVS has      7 established control drug order thresholds      8 which will flag on the IRR, item review      9 report, as well as field loss prevention      10 NovaStar reports."</p> <p>11 Do you see that?</p> <p>12 A. Yes.</p> <p>13 Q. Is that the flags that we're      14 talking about when we talk about the      15 other flag that we were talking about      16 in -- in Document Number 68-A?</p> <p>17 MS. MILLER: Objection.</p> <p>18 BY MR. BAKER:</p> <p>19 Q. Is that the type of flag we      20 are talking about?</p> <p>21 A. I don't know if I can quite      22 interpret that, because I also see the      23 field loss prevention software reports.</p> <p>24 Q. Let's move to the next</p>

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<p>1 document.</p> <p>2 MR. BAKER: Let's go to 211</p> <p>3 please.</p> <p>4 (Document marked for</p> <p>5 identification as Exhibit</p> <p>6 CVS-Devlin-P-211.)</p> <p>7 MR. BAKER: This is marked</p> <p>8 Devlin 211 for some reason. We'll</p> <p>9 take it as it is.</p> <p>10 BY MR. BAKER:</p> <p>11 Q. All right. This is an</p> <p>12 e-mail dated 2/24/10. Do you see it?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Now, this is, if you</p> <p>15 look at the bottom of that page it says</p> <p>16 from John Mortelliti to Ellen Demetrius</p> <p>17 and to Frank Devlin, that's you, right?</p> <p>18 Correct?</p> <p>19 A. It appears that's what's on</p> <p>20 the document, yes.</p> <p>21 Q. All right. And there's two</p> <p>22 or three other people. Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. The subject is</p>	<p>1 IRR?</p> <p>2 A. Yes.</p> <p>3 Q. All right. The IRR report</p> <p>4 being very thick and costly to run daily,</p> <p>5 is that what that says?</p> <p>6 A. That's what it says.</p> <p>7 Q. Okay. And is this at a time</p> <p>8 when we have one person doing the review?</p> <p>9 MS. MILLER: Objection.</p> <p>10 THE WITNESS: Again, as I</p> <p>11 mentioned earlier, I'm not exactly</p> <p>12 sure of time frames.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Is the IRR a sample of a</p> <p>15 flagged order?</p> <p>16 MS. MILLER: Objection.</p> <p>17 BY MR. BAKER:</p> <p>18 Q. Is it or not?</p> <p>19 A. Can you repeat that again?</p> <p>20 MS. MILLER: Objection.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Is the IRR a flagged order?</p> <p>23 MS. MILLER: Objection.</p> <p>24 THE WITNESS: No.</p>
<p>1 adjustment to the CVS SOM. Do you see</p> <p>2 that?</p> <p>3 A. Yes.</p> <p>4 Q. It says, "Ellen, would it be</p> <p>5 possible to do this for Friday? Also,</p> <p>6 with expenses being tight right now,</p> <p>7 would we be able to turn off the control</p> <p>8 drug IRR for all the DCs except</p> <p>9 Lumberton? The report is very thick and</p> <p>10 costly to run daily."</p> <p>11 Do you see that?</p> <p>12 A. I do see that.</p> <p>13 Q. Explain to me what that</p> <p>14 means, "the report is very thick and</p> <p>15 costly to run daily."</p> <p>16 You are on this e-mail. I</p> <p>17 want you to tell me what that means.</p> <p>18 MS. MILLER: Objection.</p> <p>19 BY MR. BAKER:</p> <p>20 Q. What does that mean?</p> <p>21 A. Again, I don't recall this</p> <p>22 particular e-mail. I could attempt to</p> <p>23 interpret what it means.</p> <p>24 Q. Is it a discussion of the</p>	<p>1 BY MR. BAKER:</p> <p>2 Q. What does the IRR represent?</p> <p>3 A. Item review report.</p> <p>4 Q. Of what?</p> <p>5 A. Well, it could have</p> <p>6 potential -- potential suspicious orders.</p> <p>7 Q. Correct, a potential</p> <p>8 suspicious order. Is that one that was</p> <p>9 flagged under the --</p> <p>10 A. Yeah, that would be</p> <p>11 outside --</p> <p>12 Q. Okay.</p> <p>13 A. Outside the parameters, yes.</p> <p>14 Q. Okay. So it would be a</p> <p>15 flagged order?</p> <p>16 A. You could use that term.</p> <p>17 Q. Okay. So let's try to use</p> <p>18 that term so we are on the same page.</p> <p>19 If we're talking about a</p> <p>20 flagged order, you now know what we're</p> <p>21 talking about, correct?</p> <p>22 MS. MILLER: Objection.</p> <p>23 BY MR. BAKER:</p> <p>24 Q. Right?</p>

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<p>1       A. Sure.</p> <p>2       Q. Okay. And tell me what you 3 mean by a flagged order.</p> <p>4       A. Be something that you'd want 5 to take a look at.</p> <p>6       Q. Okay. Because -- how did it 7 become flagged under the suspicious order 8 monitoring system within CVS? At that 9 time in 2010, how would it get flagged?</p> <p>10      A. I believe it would be driven 11 by the algorithm that was put in place 12 against the store orders. And that would 13 flag potential orders to take a look at.</p> <p>14      Q. Okay. And to take a look at 15 them, would that require an 16 investigation?</p> <p>17      A. Yes, to varying degrees.</p> <p>18      Q. Okay. And if this was a 19 very thick and costly to run daily 20 report, how many are we talking about? 21 How many flagged orders are we talking 22 about at that point?</p> <p>23      A. I wouldn't know.</p> <p>24      Q. Did you go check to find</p>	<p>1       Q. Was the documentation under 2 the policies and procedures in effect at 3 that time with CVS supposed to be 4 attached to the IRR?</p> <p>5           MS. MILLER: Objection.</p> <p>6           THE WITNESS: I -- again, 7 you know, I apologize for just not 8 recalling dates. But this -- you 9 know, as I mentioned before, this 10 has been an evolving process. And 11 exact dates, and if you're saying 12 at this particular time, I'm not 13 sure where we were in that 14 process.</p> <p>15          BY MR. BAKER:</p> <p>16           Q. Okay. You see here the next 17 sentence says, "Once we get the formula 18 acceptable, we can turn it back on for 19 the network."</p> <p>20           Do you see that?</p> <p>21           A. I do see that.</p> <p>22           Q. Okay. Go to the next page. 23 This is an e-mail from Ellen Demetrius to 24 Frank Devlin. It's a pourover from the</p>
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<p>1 out?</p> <p>2           MS. MILLER: Objection.</p> <p>3           THE WITNESS: No.</p> <p>4          BY MR. BAKER:</p> <p>5           Q. Do you know what was being 6 done to investigate those flagged orders, 7 if anything?</p> <p>8           MS. MILLER: Objection.</p> <p>9           THE WITNESS: I know we 10 had -- the IRR process was in 11 place. It was being reviewed on a 12 daily basis. Anything outside 13 those parameters was being -- 14 being reviewed. There were 15 varying degrees of investigation 16 that would take place.</p> <p>17          BY MR. BAKER:</p> <p>18           Q. Do you know what 19 documentation there was of that 20 investigation, if any?</p> <p>21           MS. MILLER: Objection.</p> <p>22           THE WITNESS: I'm not sure 23 on the documentation.</p> <p>24          BY MR. BAKER:</p>	<p>1 bottom of the -- of the page before. Go 2 to the page before.</p> <p>3           Do you see here, this e-mail 4 right here, February 16, 2010, from Ellen 5 Demetrius to you, Frank Devlin, do you 6 see that?</p> <p>7           MS. MILLER: You mean at the 8 bottom of the document on the 9 first page?</p> <p>10          MR. BAKER: Bottom of the 11 document.</p> <p>12          BY MR. BAKER:</p> <p>13           Q. Do you see that? And then 14 it goes over to the next page. It says, 15 "Hi Frank."</p> <p>16           Do you see that?</p> <p>17           A. I see the "hi Frank," yes, 18 okay.</p> <p>19           Q. Okay.</p> <p>20           A. All right.</p> <p>21           Q. And that's the e-mail from 22 Ellen to you, correct?</p> <p>23           A. Let me take a look at it. I 24 do see that.</p>

<p style="text-align: right;">Page 278</p> <p>1 Q. Okay. Let's read the 2 e-mail. 3 "Hi Frank. I just spoke to 4 John and Rick about your request. What 5 we would like to do is have you pick a 6 day that you would like us to work on, 7 then we will run and rerun the different 8 scores, .16, .17, et cetera, until you 9 are satisfied with the results. Once you 10 are satisfied, we will change production 11 to the new score for controls. Is that a 12 satisfactory plan? Thanks, Ellen."</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Do you see where you 16 responded to that, Frank Devlin? Do you 17 see where that -- you responded to it?</p> <p>18 A. I'm reading it now.</p> <p>19 MS. MILLER: Which portion 20 of the chain are you referring to 21 as a response?</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Did you respond to it?</p> <p>24 Let's go back up to the</p>	<p style="text-align: right;">Page 280</p> <p>1 February 15, 2010. Do you see this 2 portion of the e-mail string? 3 A. "This is a follow-up on our 4 telephone call"?</p> <p>5 Q. It says, "Adjustment to the 6 CVS" -- "CVS SOM."</p> <p>7 Do you see that?</p> <p>8 A. I do.</p> <p>9 Q. Okay. This is between you 10 and Robert Williamson, February 15, 2010.</p> <p>11 Do you see that?</p> <p>12 A. I do.</p> <p>13 Q. Okay. Do you see there 14 where it says, "The score used for 15 pending is currently .15"?</p> <p>16 A. I do see that.</p> <p>17 Q. Is that a -- is that 18 consistent with the -- the score that was 19 used for flagging orders?</p> <p>20 MS. MILLER: Objection.</p> <p>21 THE WITNESS: That's what it 22 states in this e-mail. For me to 23 testify that indeed was the score 24 in place at that date, I don't --</p>
<p style="text-align: right;">Page 279</p> <p>1 e-mail. Let's repeat it. 2 It says, "Hi Frank. I just 3 spoke to John and Rick about your 4 request. What we would like to do is 5 have you pick a day that you would like 6 us to work on, then we will run and rerun 7 the different scores, .16, .17, et 8 cetera, until you are satisfied with the 9 results. Once you are satisfied, we will 10 change production to the new scores for 11 controls. Is that a satisfactory plan? 12 Thanks, Ellen."</p> <p>13 Do you see that?</p> <p>14 A. I do see that.</p> <p>15 Q. Okay. Were you involved 16 with the process of changing the score on 17 the algorithm from .15 to a number above 18 .15?</p> <p>19 A. I -- I don't -- I don't 20 recall the situation, from looking at the 21 e-mail. I'm sure I was involved in the 22 process to some extent, I just don't 23 recall the particulars around it.</p> <p>24 Q. Look down at the bottom,</p>	<p style="text-align: right;">Page 281</p> <p>1 I don't recall a -- 2 BY MR. BAKER: 3 Q. Okay. But it looks like if 4 you take this e-mail string up at top, 5 that you are directly involved at least 6 with having the score raised above .15. 7 Am I right or wrong?</p> <p>8 MS. MILLER: Objection.</p> <p>9 THE WITNESS: I'm reading, 10 I'm just reading through the 11 e-mails. And just from what I 12 recall, I do recall being on some 13 conference calls and discussing 14 the score.</p> <p>15 As far as particular 16 activities I took, I just -- I 17 don't recall what I did.</p> <p>18 BY MR. BAKER: 19 Q. Okay. But the documentation 20 indicates that you were involved in those 21 activities; is that right?</p> <p>22 A. And I -- then I testified 23 that I know that I was involved and 24 participated in conference calls.</p>

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<p>1 Q. Okay. You talked briefly      2 about what you had as an expectation of a      3 store -- of -- of an analyst when an      4 investigation would be conducted. Do you      5 recall that testimony?</p> <p>6 A. I recalled discussing some      7 components of it, yes.</p> <p>8 (Document marked for      9 identification as Exhibit      10 CVS-Devlin-P-69.)</p> <p>11 BY MR. BAKER:</p> <p>12 Q. Let me show you what's      13 marked as Exhibit 69.</p> <p>14 This is called "SOM due      15 diligence guidance document, questions to      16 consider when calling the pharmacy."</p> <p>17 Do you see that?</p> <p>18 A. I do.</p> <p>19 Q. Have you ever seen this --</p> <p>20 MS. MILLER: Bill, was this      21 attached to an e-mail?</p> <p>22 MR. BAKER: I don't know. I      23 don't know.</p> <p>24 MS. MILLER: There's no --</p>	<p>1 Q. The guidelines that were      2 provided, did they have guidelines      3 consistent with what you talked about, at      4 least earlier in this deposition about      5 what your expectations were for      6 investigations?</p> <p>7 A. I'd have to look at the      8 documents. I mean, what I testified to,      9 that's all I could recall off the top of      10 my head.</p> <p>11 Q. But the documents that you      12 reviewed, were they consistent with what      13 you testified to?</p> <p>14 MS. MILLER: Objection.</p> <p>15 THE WITNESS: Which?</p> <p>16 BY MR. BAKER:</p> <p>17 Q. The part about contacting      18 the pharmacy, doing the comparison of the      19 prior orders to the current orders, that      20 list of things that you talked about?</p> <p>21 A. Where?</p> <p>22 Q. Your testimony.</p> <p>23 A. Oh, what I spoke about?</p> <p>24 Q. Yes.</p>
<p>1 it appears to be undated. Do you      2 have --</p> <p>3 MR. BAKER: I'm just going      4 with the CVS documentation. I'm      5 going to ask him if he knows about      6 this.</p> <p>7 BY MR. BAKER:</p> <p>8 Q. Do you know anything about      9 it, the due diligence questions, the SOM      10 due diligence guidance document? Are you      11 aware of this document at all?</p> <p>12 A. Again, I don't -- I don't      13 recall it.</p> <p>14 Q. Okay. Was there any sort of      15 document in place at CVS when you worked      16 there that discussed what was to be done      17 by analysts who were reviewing IRRs when      18 conducting investigations related to the      19 IRRs?</p> <p>20 A. I'm sure there were      21 guidelines provided, yes.</p> <p>22 Q. Okay.</p> <p>23 A. I don't recall a particular      24 guideline or when it was produced.</p>	<p>1 MS. MILLER: Are you --</p> <p>2 BY MR. BAKER:</p> <p>3 Q. Was there a document that      4 had all the stuff listed in it?</p> <p>5 A. Oh, I don't know. I don't      6 know, sir.</p> <p>7 Q. You don't know?</p> <p>8 A. I don't know. You had asked      9 me what they would do. I was just      10 harkening back what I could recall was      11 going on at the time.</p> <p>12 Q. Okay. Let's move to the      13 next document, Number 2 -- Number 140.</p> <p>14 (Document marked for      15 identification as Exhibit      16 CVS-Devlin-P-140.)</p> <p>17 BY MR. BAKER:</p> <p>18 Q. Take a look at this. This      19 is a suspicious order monitoring for      20 PSE/control drugs. Summary of key      21 concepts and procedures dated August 27,      22 2010.</p> <p>23 Have you ever seen this      24 document?</p>

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<p>1        A. Again, I don't -- I don't I      2 don't recall the particulars of it, no.      3        Q. Okay. Go to Page 3 of that      4 document. It's labeled 61193. It says,      5 "Purpose of item inventory review      6 report."      7        Do you see that?      8        A. "Purpose of inventory review      9 report"?      10      Q. Yes, sir.      11      A. I see that.      12      Q. In the CVS policy and      13 procedure, it's called an item review      14 report. And this calls it an inventory      15 review report. Is that the same thing or      16 a different thing?      17      A. I believe so because I      18 mentioned earlier, there's kind of an      19 evolution of terminology being used.      20      Q. Right. And it says here      21 that the purpose of the inventory review      22 report, the IRR, is to prevent diversion      23 of PSE/EPH/control drug products,      24 correct?</p>	<p>1 loss prevention NovaStor reports."      2        Do you see that?      3        A. Yes.      4        Q. Okay. It says, "These      5 thresholds are the primary tool to      6 prevent stores from purchasing excessive      7 or potentially suspicious control drug      8 orders."      9        Do you see that?      10      A. I do.      11      Q. Okay. And what would be the      12 reason behind that, that there would be a      13 need to prevent stores from purchasing      14 excessive or potentially suspicious      15 control drug orders?      16      A. Can you repeat that?      17      Q. What would be the reasoning      18 behind the need to prevent stores from      19 purchasing excessive or potentially      20 suspicious control drug orders?      21      MS. MILLER: Objection.      22 BY MR. BAKER:      23      Q. Do you have an answer to      24 that question, sir?</p>
<p>1        A. That's what it states, yes.      2        Q. Okay. What is diversion?      3        MS. MILLER: Objection.      4 BY MR. BAKER:      5        Q. Go ahead. What is      6 diversion?      7        A. Diversion, I would look at      8 potential theft.      9        Q. Anything other than theft?      10      A. I think theft is what comes      11 to the top of my mind.      12      Q. Okay. Go back to      13 Exhibit 97. And go to Bates number      14 88997. Are you there?      15      A. Yes.      16      Q. It says -- at Paragraph      17 Number 2 at the top, do you see that?      18      A. Items reviewed?      19      Q. Yes. It says, "CVS has      20 established control drug order thresholds      21 which will flag on the IRR."      22      Do you see that?      23      A. I do.      24      Q. Okay. "As well as field</p>	<p>1        A. Can you repeat it one more      2 time?      3        Q. What would be the reason for      4 these thresholds to be the primary tool      5 to prevent stores from purchasing      6 excessive or potentially suspicious      7 control drug orders?      8        A. Well, you'd want to ensure      9 that there's proper inventory management      10 of the product.      11      Q. Why would there be a need to      12 prevent the store from purchasing an      13 excessive or potentially suspicious      14 control drug order?      15      A. Again, would come down to --      16      MS. MILLER: Objection.      17      THE WITNESS: -- come down      18 to proper inventory management.      19 BY MR. BAKER:      20      Q. Other than that?      21      A. That would certainly be a      22 component. That was --      23      Q. What's the whole reason that      24 you're doing this suspicious order</p>
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<p>1 monitoring system to begin with?</p> <p>2 MS. MILLER: Objection.</p> <p>3 BY MR. BAKER:</p> <p>4 Q. Tell me.</p> <p>5 A. To ensure we're meeting DEA</p> <p>6 regulations.</p> <p>7 Q. Of monitoring of controlled</p> <p>8 substance to prevent what?</p> <p>9 MS. MILLER: Objection.</p> <p>10 BY MR. BAKER:</p> <p>11 Q. To prevent what?</p> <p>12 A. I would say improper use of</p> <p>13 control drugs.</p> <p>14 Q. Diversion, correct?</p> <p>15 MS. MILLER: Objection.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. Is that correct?</p> <p>18 A. If that's the term you want</p> <p>19 to use.</p> <p>20 MS. MILLER: Objection.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Okay. Is that the term</p> <p>23 that's being used in your documentation</p> <p>24 here. Go back to the document that I</p>	<p>1 A. I'm reading it as you speak.</p> <p>2 Q. I'm asking, do you see the</p> <p>3 word responsibilities? I'll go through</p> <p>4 them with you. Do you see the word</p> <p>5 responsibilities?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. It says DC Rx. What</p> <p>8 is a DC Rx? What does that mean?</p> <p>9 A. As I mentioned earlier, that</p> <p>10 would be DC pharmacy.</p> <p>11 Q. Okay. "Review IRR daily and</p> <p>12 determine whether variances are within</p> <p>13 acceptable ranges."</p> <p>14 Do you see that?</p> <p>15 A. I do.</p> <p>16 Q. Okay. Is the IRR a daily</p> <p>17 report?</p> <p>18 A. Yes. I believe so, yes.</p> <p>19 Q. Okay. What is it a daily</p> <p>20 report of?</p> <p>21 MS. MILLER: Objection.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Go ahead. What is it a</p> <p>24 daily report of?</p>
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<p>1 previously pulled up. It's document</p> <p>2 Number 140. Look at 61193. It says,</p> <p>3 "What is a control drug IRR?"</p> <p>4 Do you see that?</p> <p>5 It says, "Purpose of</p> <p>6 inventory report, the IRR."</p> <p>7 Do you see that?</p> <p>8 A. I'm just getting to it now.</p> <p>9 I do see that.</p> <p>10 Q. "Assist in detection of</p> <p>11 potential suspicious orders."</p> <p>12 Do you see that?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Okay. And is that to help</p> <p>15 prevent diversion?</p> <p>16 A. That's what's stated here in</p> <p>17 the document, yes.</p> <p>18 Q. Okay. Let's go to the next</p> <p>19 numbered document. Actually, go back to</p> <p>20 that document if you would, the previous</p> <p>21 document, Number 140. And go to Bates</p> <p>22 Number 61197. Do you see under</p> <p>23 responsibilities, what's listed there?</p> <p>24 Mr. Devlin, do you see that?</p>	<p>1 MS. MILLER: Objection.</p> <p>2 Asked and answered.</p> <p>3 THE WITNESS: Orders outside</p> <p>4 the bounds of the algorithm that</p> <p>5 was established.</p> <p>6 BY MR. BAKER:</p> <p>7 Q. Okay. And how many of these</p> <p>8 IRRs were being generated daily amongst</p> <p>9 all the thousands of stores that were</p> <p>10 making orders of controlled substances to</p> <p>11 distribution centers owned by CVS?</p> <p>12 MS. MILLER: Objection.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Tell me.</p> <p>15 MS. MILLER: Objection.</p> <p>16 THE WITNESS: I don't know.</p> <p>17 BY MR. BAKER:</p> <p>18 Q. You don't know?</p> <p>19 A. No.</p> <p>20 Q. Was it over 100?</p> <p>21 MS. MILLER: How many IRR</p> <p>22 reports?</p> <p>23 BY MR. BAKER:</p> <p>24 Q. How many IRR reports on</p>

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<p>1 average would be generated daily?</p> <p>2 A. I have no idea.</p> <p>3 Q. Was it over 200?</p> <p>4 A. I have no idea.</p> <p>5 Q. Was it over 300?</p> <p>6 A. I have no idea.</p> <p>7 Q. Was it over a thousand?</p> <p>8 MS. MILLER: Objection to</p> <p>9 this whole line.</p> <p>10 BY MR. BAKER:</p> <p>11 Q. Go ahead.</p> <p>12 A. I have no idea.</p> <p>13 Q. You have no idea how many</p> <p>14 IRRs were being generated daily, did you?</p> <p>15 You have no idea, did you?</p> <p>16 MS. MILLER: Are you asking</p> <p>17 how many reports?</p> <p>18 BY MR. BAKER:</p> <p>19 Q. How many item review reports</p> <p>20 were generated daily?</p> <p>21 A. Oh, there would be an item</p> <p>22 review report generated for each</p> <p>23 distribution center.</p> <p>24 Q. Okay. So how many reports</p>	<p>1 place. And on all the evidence</p> <p>2 that I had, the process was in</p> <p>3 place.</p> <p>4 BY MR. BAKER:</p> <p>5 Q. Did you monitor the process</p> <p>6 to make sure that it was doing what it</p> <p>7 was supposed to be doing? Did you? Or</p> <p>8 did you just delegate that?</p> <p>9 A. I mean, there certainly was</p> <p>10 delegation that took place.</p> <p>11 Q. Okay. Part of that was that</p> <p>12 the DC Rx, the DC pharmacist was supposed</p> <p>13 to review the report, the IRR daily, and</p> <p>14 determine whether variances were within</p> <p>15 acceptable ranges, correct?</p> <p>16 A. No.</p> <p>17 Q. That's what it says here on</p> <p>18 the responsibilities.</p> <p>19 A. It's DC pharmacy. It's not</p> <p>20 pharmacist.</p> <p>21 Q. DC pharmacy. The DC</p> <p>22 pharmacy. So who is the DC pharmacy? Is</p> <p>23 that a person? Is that a department?</p> <p>24 Who is that?</p>
<p>1 were there? How many orders were on</p> <p>2 those reports?</p> <p>3 A. That, I do not know.</p> <p>4 Q. How many orders were flagged</p> <p>5 on those reports?</p> <p>6 A. That, I do not know.</p> <p>7 Q. What was the average number</p> <p>8 of orders that were flagged on those</p> <p>9 reports at any time during the period</p> <p>10 that you were there?</p> <p>11 MS. MILLER: Objection.</p> <p>12 THE WITNESS: I just -- I</p> <p>13 don't know.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. What were the average number</p> <p>16 of investigations that took place</p> <p>17 relative to the flagged orders under</p> <p>18 those IRRs?</p> <p>19 A. I guess I -- I don't recall.</p> <p>20 Q. Was that not part of your</p> <p>21 job to know that information?</p> <p>22 MS. MILLER: Objection.</p> <p>23 THE WITNESS: My job to</p> <p>24 ensure that we had a process in</p>	<p>1 A. It would be referencing a</p> <p>2 department.</p> <p>3 Q. Okay. So the department was</p> <p>4 to review the IRR daily and determine</p> <p>5 whether variances were within acceptable</p> <p>6 ranges, correct?</p> <p>7 A. That's what's stated on this</p> <p>8 document. Again, I'm not sure as far as</p> <p>9 timelines go.</p> <p>10 Q. And who within the</p> <p>11 department was -- was that, that was</p> <p>12 supposed to review the daily IRRs?</p> <p>13 A. It would depend on which</p> <p>14 pharmacy distribution center we were</p> <p>15 talking about. There were some pharmacy</p> <p>16 distribution centers that would have a</p> <p>17 pharmacy manager. Some would have a</p> <p>18 pharmacy supervisor.</p> <p>19 Q. Look at the bottom bullet</p> <p>20 here. It says, "If there is no</p> <p>21 suspicious order, then attach</p> <p>22 documentation to IRR report and file."</p> <p>23 Do you see that?</p> <p>24 A. I do see that.</p>
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<p>1       Q. Okay. What documentation 2 should be attached to the IRR report and 3 filed?</p> <p>4       A. I can't recall a 5 documentation. I believe we did have the 6 IRR reports signed off on, just to show 7 that they were reviewed.</p> <p>8       Q. Okay. Let's go back up. It 9 says, "DC Rx files information with DC 10 copy of IRR."</p> <p>11      Do you see that?</p> <p>12      A. I do see that.</p> <p>13      Q. All right. And then the 14 next bullet, determination of suspicious 15 order. "Director of logistics loss 16 prevention" -- that's you, right?</p> <p>17      A. Yes.</p> <p>18      Q. Okay. 19           -- "notifies DEA and 20 conducts investigation. No further 21 shipments of the products to the store 22 until the matter is resolved."</p> <p>23      Do you see that?</p> <p>24      A. I do see that.</p>	<p>1       A. No suspicious -- 2       Q. Attached documentation. 3       What -- what documentation? 4       A. Perhaps it would be phone 5 calls that were made. Contact with field 6 loss prevention. Contact with the 7 pharmacy. Those are a couple of examples 8 I can think of.</p> <p>9       Q. Okay. That's the 10 documentation I'm asking for.</p> <p>11      A. I'm sure -- I'm sure there 12 are -- I'm sure there was probably more. 13 That's all I can recall.</p> <p>14      Q. Okay. All right. But that 15 was -- that was a written policy within 16 your department that that's how it's 17 supposed to be done. This is it, attach 18 documentation to IRR report and file, 19 right?</p> <p>20      MS. MILLER: Objection.</p> <p>21      THE WITNESS: Again, not 22 sure of time frames or --</p> <p>23 BY MR. BAKER:</p> <p>24      Q. Well, let's go back, let's</p>
<p style="text-align: center;">Page 299</p> <p>1       Q. Okay. You never did that 2 though? You never contacted the DEA to 3 do that; is that correct?</p> <p>4       MS. MILLER: Objection.</p> <p>5       MR. BAKER: She objected.</p> <p>6 BY MR. BAKER:</p> <p>7       Q. Did you ever contact the DEA 8 at all in that context?</p> <p>9       A. I did not.</p> <p>10      Q. Okay. The next says, "No 11 suspicious order. If there's no 12 suspicious order, then attach 13 documentation to IRR report and file."</p> <p>14      Do you see that?</p> <p>15      A. Yes.</p> <p>16      Q. Okay. Is the documentation 17 that's referred to there, is that the 18 investigation?</p> <p>19      A. That's not how I interpret 20 that.</p> <p>21      Q. How do you interpret that?</p> <p>22      A. I look at no suspicious 23 order that the IRR report would be filed.</p> <p>24      Q. I'm sorry?</p>	<p style="text-align: center;">Page 301</p> <p>1       go back. Go back to the beginning here.</p> <p>2       A. Again, I'm not, you know, 3 once this --</p> <p>4       Q. Go back to Page 1 of this 5 document right here. It should be Bates 6 Number 61191. August 27, 2010. Do you 7 see it?</p> <p>8       I want you to be sure of 9 this time frame.</p> <p>10      A. I see that.</p> <p>11      Q. Do you see that?</p> <p>12      A. Yes.</p> <p>13      Q. All right. Now let's go 14 back to where we were within this 15 document, which is no suspicious order, 16 attach documentation to IRR report and 17 file. Do you see that?</p> <p>18      A. Yes.</p> <p>19      Q. Okay. So we are talking -- 20 are we talking about something that was a 21 policy in writing, August 27, 2010, that 22 we're reading right now as it relates to 23 how to handle investigation of IRRs?</p> <p>24      MS. MILLER: Objection.</p>

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<p>1        THE WITNESS: I can't -- I      2        can't, based on this document, say      3        that this was a policy.</p> <p>4 BY MR. BAKER:</p> <p>5        Q. Well, then how did it make      6 its way into the document, how did that      7 bullet point make its way into the      8 document?</p> <p>9        MS. MILLER: Objection.</p> <p>10 BY MR. BAKER:</p> <p>11      Q. How did it make its way into      12 there?</p> <p>13      MS. MILLER: Objection.</p> <p>14      THE WITNESS: I don't know.</p> <p>15 BY MR. BAKER:</p> <p>16      Q. This is part of that DEA      17 speaking points we talked about earlier,      18 isn't it?</p> <p>19      MS. MILLER: Objection.</p> <p>20 BY MR. BAKER:</p> <p>21      Q. Isn't that what this is?</p> <p>22      A. I'm not sure.</p> <p>23      Q. You're not sure? Do you      24 remember that I showed you the August 25,</p>	<p>1 memory.</p> <p>2        Q. Okay. Let's take a break      3 while we find that.</p> <p>4        THE VIDEOGRAPHER: Off      5 video, 2:07.</p> <p>6        (Short break.)</p> <p>7        THE VIDEOGRAPHER: We are      8 going back on record. Beginning      9 of Media File 8. The time is      10 2:21.</p> <p>11 BY MR. BAKER:</p> <p>12      Q. Pull Exhibit 81, please.</p> <p>13 You have in front of you --</p> <p>14      MS. MILLER: Could you give      15 us one minute?</p> <p>16      MR. BAKER: Sure.</p> <p>17      MS. MILLER: Okay.</p> <p>18 BY MR. BAKER:</p> <p>19      Q. You have in front of you      20 Exhibit 81. You've seen this exhibit      21 earlier today, correct?</p> <p>22      A. Yes.</p> <p>23      Q. Okay. This talks about an      24 e-mail between John Mortelliti and a</p>
<p>1        2010 e-mail to Ms. Propatier, do you      2 remember that, on Exhibit Number 97, do      3 you remember that?</p> <p>4        A. Let me take some time to      5 take a look at it.</p> <p>6        Q. Okay. It says, "Could you      7 please post? We added the suspicious      8 order monitoring."</p> <p>9        Do you remember that?</p> <p>10      A. I see that, yes.</p> <p>11      Q. Do you remember the e-mail I      12 showed you about DEA speaking points,      13 make sure we use this when the DEA asks,      14 that it's not to be used as a prop, but      15 to be used as a tool, do you remember      16 that?</p> <p>17      MS. MILLER: Objection.</p> <p>18      Why don't you show him the      19 e-mail?</p> <p>20 BY MR. BAKER:</p> <p>21      Q. Do you remember that? If      22 you don't remember it, just say you don't      23 remember it.</p> <p>24      A. I'd like to refresh my</p>	<p>1 whole bunch of people on that e-mail      2 list. It talks about importance high.      3 "Team, these are the final approved      4 DEA" -- "speaking points for the DEA      5 agents" -- do you see that?</p> <p>6        A. I do.</p> <p>7        Q. Okay.</p> <p>8        -- "if they come to one of      9 our facilities and question suspicious      10 monitoring. It is okay to share this      11 document. Please be sure your team      12 understands it before presenting it so it      13 doesn't look like a prop instead of a      14 tool."</p> <p>15        Do you see that?</p> <p>16      A. I do.</p> <p>17      Q. "I included Marvin because      18 DEA will be there today as well."</p> <p>19        Do you see that?</p> <p>20      A. Yes.</p> <p>21      Q. Okay. Now, look at the next      22 page on this document. Do you see this      23 one, August 27, 2010?</p> <p>24        Do you see that?</p>

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<p>1 A. Yes.</p> <p>2 Q. This is the same group of</p> <p>3 documents that we've just been</p> <p>4 questioning you about, correct?</p> <p>5 A. It appears so, yes.</p> <p>6 Q. All right. This is the DEA</p> <p>7 speaking points. Just go back down</p> <p>8 inside there. Keep paging down. All</p> <p>9 right. CVS suspicious order monitoring.</p> <p>10 Do you see that? Keep going</p> <p>11 down. One more page.</p> <p>12 "The purpose of the IRR</p> <p>13 report." Go up one page.</p> <p>14 Do you see that? This is</p> <p>15 the same document that I've been going</p> <p>16 over with you before we just took a</p> <p>17 break, correct?</p> <p>18 A. Yes.</p> <p>19 Q. All right. So when I say</p> <p>20 this is the DEA speaking points, do you</p> <p>21 understand this is what I'm talking</p> <p>22 about?</p> <p>23 A. I see the correlation</p> <p>24 between this document and the document</p>	<p>1 Q. Okay. Let's go back up to</p> <p>2 that.</p> <p>3 Now, you understand that</p> <p>4 this is what y'all were showing to DEA;</p> <p>5 is that right?</p> <p>6 MS. MILLER: Objection.</p> <p>7 BY MR. BAKER:</p> <p>8 Q. Was this what was put in</p> <p>9 place to show the DEA according to that</p> <p>10 e-mail?</p> <p>11 MS. MILLER: Objection.</p> <p>12 THE WITNESS: I don't know</p> <p>13 if this was actually shown to the</p> <p>14 DEA.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. Wasn't that the purpose of</p> <p>17 it, according to the e-mail, was to show</p> <p>18 it to the DEA?</p> <p>19 MS. MILLER: Objection.</p> <p>20 THE WITNESS: I was</p> <p>21 interpreting it more as speaking</p> <p>22 points.</p> <p>23 BY MR. BAKER:</p> <p>24 Q. Okay. Speaking points to</p>
<p>1 that you've been talking about, yes.</p> <p>2 Q. Okay. Now go down to where</p> <p>3 it talks about -- keep going down.</p> <p>4 MS. MILLER: And which --</p> <p>5 are you in 81 or 140?</p> <p>6 MR. BAKER: Yeah. I'm still</p> <p>7 in 81. Still in 81. Keep going.</p> <p>8 Keep going. Keep going.</p> <p>9 BY MR. BAKER:</p> <p>10 Q. The responsibilities. Do</p> <p>11 you see that?</p> <p>12 A. What Bates number is that?</p> <p>13 Q. Well, it doesn't have a</p> <p>14 Bates number, because this is an</p> <p>15 attachment to the document.</p> <p>16 MS. MILLER: It has Bates.</p> <p>17 THE WITNESS: 5306?</p> <p>18 BY MR. BAKER:</p> <p>19 Q. The one that talks about</p> <p>20 responsibilities. Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. Yes. 53 -- 075306. Do you</p> <p>23 see that?</p> <p>24 A. Yes.</p>	<p>1 the DEA because they were going to be at</p> <p>2 a facility. You're sending it to Marvin,</p> <p>3 whoever that is, because the DEA is going</p> <p>4 to be there today, correct?</p> <p>5 A. That's what the e-mail says,</p> <p>6 yes.</p> <p>7 Q. Okay. So you understand</p> <p>8 what I'm talking about when I say DEA</p> <p>9 speaking points from now on, correct?</p> <p>10 This is what I'm talking about.</p> <p>11 A. Yes.</p> <p>12 Q. Can you remember that if I</p> <p>13 ask you to recall that again in this</p> <p>14 deposition, that the DEA speaking points</p> <p>15 are these slides right here?</p> <p>16 A. Which is Exhibit 140?</p> <p>17 Q. It's Exhibit 81.</p> <p>18 A. Okay. I'll maintain.</p> <p>19 Q. You'll remember that, right?</p> <p>20 A. Yes.</p> <p>21 Q. Okay. Thank you. Let's go</p> <p>22 back to 211, if you would. Do you</p> <p>23 remember the series of e-mails that I was</p> <p>24 talking about --</p>

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<p>1 MS. MILLER: Bill, if you      2 can give him a moment to put that      3 in front of him.</p> <p>4 BY MR. BAKER:</p> <p>5 Q. Number 211.</p> <p>6 MS. MILLER: How recently      7 was that?</p> <p>8 MR. BAKER: I don't know.</p> <p>9 THE WITNESS: I don't recall      10 a 211. Oh, here it is.</p> <p>11 BY MR. BAKER:</p> <p>12 Q. Do you see it?</p> <p>13 A. It didn't have a sticker on      14 it.</p> <p>15 Q. Now, at the bottom of that      16 page, the front page there, it says,      17 "Ellen, would it be possible to do this      18 Friday?"</p> <p>19 And this is regarding      20 adjustment to the CVS SOM.</p> <p>21 "Also with expenses being      22 tight right now, would we be able to turn      23 off the control drug IRR for all the DCs      24 except Lumberton?"</p>	<p>1 monitoring?</p> <p>2 A. I -- I've read an IRR. I      3 did not perform the IRR full review      4 process.</p> <p>5 Q. Okay. So when you were at      6 CVS in 2010, did you know how to analyze      7 an IRR to determine whether or not it met      8 the -- the standards of suspicious order      9 monitoring set forth by CVS?</p> <p>10 A. I had a conceptual      11 understanding of it, but I did delegate      12 those responsibilities as far as the full      13 analysis goes.</p> <p>14 Q. Did you ever do any due      15 diligence type of investigation of      16 anything relative to an IRR itself?</p> <p>17 A. No. Any information would      18 have been presented to me.</p> <p>19 Q. Okay.</p> <p>20 A. But I can't --</p> <p>21 Q. The answer is no --</p> <p>22 A. I can't recall a specific      23 instance, no.</p> <p>24 MR. BAKER: Okay. Next.</p>
<p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. Okay. And then above that,      4 you see just above that, it says, "Could      5 you turn off the printout from BIP006A      6 except for John Mortelliti and Frank      7 Devlin?"</p> <p>8 Do you see that?</p> <p>9 A. I do.</p> <p>10 Q. Okay. What is that      11 printout?</p> <p>12 A. I don't recall what that --</p> <p>13 what that number stands for.</p> <p>14 Q. Would those be the IRRs?</p> <p>15 A. I'm not sure.</p> <p>16 Q. As you sit here today, is it      17 your testimony that you never read an      18 IRR?</p> <p>19 MS. MILLER: Objection.</p> <p>20 THE WITNESS: I didn't say      21 that.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Did you ever review an IRR      24 in the context of suspicious order</p>	<p>1 That's the same thing. Next.</p> <p>2 BY MR. BAKER:</p> <p>3 Q. Were there any problems that      4 you encountered with the suspicious order      5 monitoring software program that was      6 purchased from the Buzzeto related      7 company?</p> <p>8 MS. MILLER: Objection.</p> <p>9 BY MR. BAKER:</p> <p>10 Q. What's the name of the      11 company that CVS purchased the software      12 program from that was used for suspicious      13 order monitoring?</p> <p>14 MS. MILLER: Objection.</p> <p>15 THE WITNESS: Cegedim      16 Dendrite.</p> <p>17 BY MR. BAKER:</p> <p>18 Q. Okay. Is that CCS?</p> <p>19 A. I don't recall the      20 abbreviation.</p> <p>21 Q. Okay. Cegedim Dendrite, is      22 that the name of it?</p> <p>23 A. I believe so. I think his      24 company actually had a couple different</p>

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<p>1 names, so I'm not sure.</p> <p>2 Q. Okay. But that -- that was</p> <p>3 the company that Mr. Buzzeo was</p> <p>4 affiliated with?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Did you know him</p> <p>7 personally? Did you meet him personally?</p> <p>8 A. I did meet Mr. Buzzeo, yes.</p> <p>9 Q. Okay. Was there ever a</p> <p>10 problem with the system as it relates to</p> <p>11 not reporting by active ingredient,</p> <p>12 talking about the controlled substances,</p> <p>13 not reporting the controlled substances</p> <p>14 by active ingredient?</p> <p>15 MS. MILLER: Objection.</p> <p>16 BY MR. BAKER:</p> <p>17 Q. Was there?</p> <p>18 MS. MILLER: Objection.</p> <p>19 BY MR. BAKER:</p> <p>20 Q. Was there ever a problem in</p> <p>21 that respect?</p> <p>22 MS. MILLER: Objection.</p> <p>23 THE WITNESS: I can recall a</p> <p>24 change from item to active</p>	<p>1 A. I do see that.</p> <p>2 Q. All right. It says, "Here</p> <p>3 is a bullet recap of the IRR issue I</p> <p>4 communicated to you. September there</p> <p>5 were two control drugs containing hydro</p> <p>6 that appeared to have lost two to</p> <p>7 four months of history."</p> <p>8 Do you see that?</p> <p>9 A. I do see that.</p> <p>10 Q. What is the significance of</p> <p>11 that, that it lost history?</p> <p>12 MS. MILLER: Objection.</p> <p>13 THE WITNESS: I know with</p> <p>14 the algorithm -- and again, I</p> <p>15 don't recall all the parameters of</p> <p>16 the algorithm. There are multiple</p> <p>17 components on the algorithm.</p> <p>18 History was a part of it.</p> <p>19 BY MR. BAKER:</p> <p>20 Q. Okay. In order to be able</p> <p>21 to compare the current purchase or the</p> <p>22 current order against prior orders; is</p> <p>23 that correct?</p> <p>24 MS. MILLER: Objection.</p>
<p>1 ingredient.</p> <p>2 BY MR. BAKER:</p> <p>3 Q. I'm sorry, what now?</p> <p>4 A. I can recall a change from</p> <p>5 item to active ingredient.</p> <p>6 Q. Okay. Before there was a</p> <p>7 change from item to active ingredient,</p> <p>8 did that cause a problem with respect to</p> <p>9 the implementation of that system?</p> <p>10 MS. MILLER: Objection.</p> <p>11 THE WITNESS: What's the</p> <p>12 definition of a problem? I'm not</p> <p>13 sure.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. Okay. Let's talk about it.</p> <p>16 (Document marked for</p> <p>17 identification as Exhibit</p> <p>18 CVS-Devlin-P-209.)</p> <p>19 BY MR. BAKER:</p> <p>20 Q. I'm going to show you</p> <p>21 Exhibit Number 209. This is an e-mail</p> <p>22 from Mr. Mortelliti to you, Frank Devlin,</p> <p>23 10/6 of 2010.</p> <p>24 Do you see that?</p>	<p>1 BY MR. BAKER:</p> <p>2 Q. Is that right?</p> <p>3 A. I believe you would still be</p> <p>4 able to make a comparison of prior</p> <p>5 orders.</p> <p>6 Q. Okay. It says, "Ellen</p> <p>7 determined that the historical data was</p> <p>8 lost due to manufacturer change in the</p> <p>9 wording."</p> <p>10 Do you see that?</p> <p>11 A. I do see that.</p> <p>12 Q. Okay. And then it says,</p> <p>13 "October, all but one item on the network</p> <p>14 control drug IRR has lost three to</p> <p>15 four months of historical data. There</p> <p>16 are only six months of data for control</p> <p>17 drugs."</p> <p>18 Do you see that?</p> <p>19 A. I do see that.</p> <p>20 Q. Then it says, "10/6/10, sent</p> <p>21 a request from to Gary M. to have the IRR</p> <p>22 formula changed to active ingredient</p> <p>23 instead of item."</p> <p>24 Do you see that?</p>

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<p>1       A. Yes.</p> <p>2       Q. All right. Was there a</p> <p>3 problem with using the system that was in</p> <p>4 place 10/26/10 due to it not reporting</p> <p>5 the item by active ingredient?</p> <p>6       MS. MILLER: Objection.</p> <p>7       THE WITNESS: I don't -- I</p> <p>8 don't recall this particular</p> <p>9 issue. I -- I do recall a change</p> <p>10 from item to active ingredient.</p> <p>11 BY MR. BAKER:</p> <p>12      Q. Okay.</p> <p>13      A. And I know part of that was</p> <p>14 looked at. It was just an evolution in</p> <p>15 the process --</p> <p>16      Q. Okay.</p> <p>17      A. -- as far as being able to</p> <p>18 identify someone if they were spreading</p> <p>19 orders out over different manufacturers.</p> <p>20 If they started ordering a little bit</p> <p>21 from each manufacturer, that by going to</p> <p>22 active ingredient, that would -- that</p> <p>23 would provide an enhancement in the</p> <p>24 information.</p>	<p>1 does that mean?</p> <p>2       A. It wouldn't -- it wouldn't</p> <p>3 necessarily change.</p> <p>4       MS. MILLER: Objection.</p> <p>5       Excuse me.</p> <p>6       THE WITNESS: I'm sorry?</p> <p>7       MS. MILLER: Go ahead.</p> <p>8 BY MR. BAKER:</p> <p>9       Q. What does it mean?</p> <p>10      A. It wouldn't -- it</p> <p>11 wouldn't -- it wouldn't change what the</p> <p>12 pharmacy was purchasing. It would just</p> <p>13 give some better visibility as far as the</p> <p>14 active ingredients go.</p> <p>15      Q. Okay. Visibility meaning</p> <p>16 visibility under the suspicious order</p> <p>17 monitoring system?</p> <p>18      A. Yes.</p> <p>19      Q. Okay. And if they spread</p> <p>20 orders, how does that prevent visibility</p> <p>21 under the suspicious order monitoring</p> <p>22 system?</p> <p>23      MS. MILLER: Objection.</p> <p>24      THE WITNESS: It could -- it</p>
<p>1       BY MR. BAKER:</p> <p>2      Q. Okay.</p> <p>3      A. That -- that's how I</p> <p>4 remember this as an issue.</p> <p>5      Q. Tell me about spreading</p> <p>6 orders, what that means.</p> <p>7      A. Again, the change, so if you</p> <p>8 had a controlled substance and you had</p> <p>9 four or five different manufacturers for</p> <p>10 the same controlled substance. So if</p> <p>11 you'd order, let's say, and I'm just</p> <p>12 making these numbers up, so if you order</p> <p>13 five, five, five, five from the four</p> <p>14 different manufacturers, you know, that</p> <p>15 could look like even ordering. So if you</p> <p>16 went to active ingredient, that would</p> <p>17 take out that manufacturer, I guess,</p> <p>18 component of it. So you would just be</p> <p>19 looking at the overall ingredient.</p> <p>20      Q. Okay. Spreading orders,</p> <p>21 what does that mean in the context of a</p> <p>22 pharmacy and a threshold in terms of how</p> <p>23 much they purchase per month of say</p> <p>24 hydrocodone combination product, what</p>	<p>1       could still flag potentially, I</p> <p>2 believe, because there are</p> <p>3 multiple components of the</p> <p>4 algorithm. This was really just a</p> <p>5 fine-tuning of it.</p> <p>6 BY MR. BAKER:</p> <p>7      Q. Okay. But if they were</p> <p>8 spreading orders, does that flounder the</p> <p>9 radar at all insofar as suspicious order</p> <p>10 monitoring?</p> <p>11      MS. MILLER: Objection.</p> <p>12      THE WITNESS: I don't know.</p> <p>13       (Document marked for</p> <p>14 identification as Exhibit</p> <p>15 CVS-Devlin-P-55.)</p> <p>16 BY MR. BAKER:</p> <p>17      Q. Okay. Let me show you</p> <p>18 Exhibit Number 55. This is a business</p> <p>19 idea description, and it's requested on</p> <p>20 behalf of John Mortelliti. And it's --</p> <p>21 under the summary description and</p> <p>22 objectives, it says, "DEA expects CVS to</p> <p>23 prevent suspicious orders from being</p> <p>24 filled out of our DCs. The current IRR</p>

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<p>1 does not provide the proper information      2 to meet the DEA's needs. We need control      3 drugs to be monitored by active      4 ingredient. Currently the control drugs      5 are monitored by item. The IRR loses all      6 order history when the info on the item      7 changes, causing CVS to be noncompliant      8 with DEA expectations."</p> <p>9 Is that what this document      10 says?</p> <p>11 A. That's what the document      12 says.</p> <p>13 Q. Okay. And that relates to      14 active ingredient; is that correct?</p> <p>15 MS. MILLER: Objection.</p> <p>16 THE WITNESS: I see the term      17 "active ingredient" on the      18 document, yes.</p> <p>19 BY MR. BAKER:</p> <p>20 Q. Okay. And that's consistent      21 with what we've been discussing in the      22 prior e-mail, correct?</p> <p>23 A. I don't know if this      24 document, per se, is related to the prior</p>	<p>1 tell you, but these are how the      2 documents are presented to us.      3 They don't tell us --</p> <p>4 MS. MILLER: Well, this is a      5 page from a larger document. Do      6 you have the document?</p> <p>7 MR. BAKER: I don't have the      8 larger document. I don't. I wish      9 I did, but --</p> <p>10 MS. MILLER: It doesn't --</p> <p>11 MR. BAKER: We'll move      12 forward. And if we want to      13 discuss it out of the deposition,      14 we can. I'd be happy to --</p> <p>15 MS. MILLER: It's just do      16 you have a -- so you have no other      17 context related to this      18 document --</p> <p>19 MR. BAKER: At this point I      20 don't --</p> <p>21 MS. MILLER: -- to provide      22 the witness?</p> <p>23 MR. BAKER: -- as we sit      24 here today. I wish I did, but</p>
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<p>1 e-mail.</p> <p>2 Q. Okay. Well, let's go to the      3 next document.</p> <p>4 (Document marked for      5 identification as Exhibit      6 CVS-Devlin-P-164.)</p> <p>7 BY MR. BAKER:</p> <p>8 Q. It's Exhibit Number 164.</p> <p>9 This is within a native document, and      10 your attorney knows what that means.</p> <p>11 MS. MILLER: What -- Bill,      12 is there any context of where this      13 came from? Was it attached as an      14 attachment, was it a document --</p> <p>15 MR. BAKER: There was a --      16 it was a native, and we opened it,      17 this is exactly what it looked      18 like. But it's dated 5/3/11, and      19 it says Frank Devlin --</p> <p>20 MS. MILLER: Well, I see      21 there's a date of 5/3/11, but      22 there's no -- absolutely no      23 context of --</p> <p>24 MR. BAKER: I wish I could</p>	<p>1 this is all I have. This is the      2 problem with using natives.</p> <p>3 BY MR. BAKER:</p> <p>4 Q. So here we go.</p> <p>5 MS. MILLER: You don't even      6 have a title on the document of      7 when it was generated.</p> <p>8 MR. BAKER: I understand.      9 It's provided by CVS. If you have      10 a doubt on that, I'll go back and      11 try to show you where we got it.</p> <p>12 MS. MILLER: No, I      13 understand that. It's just      14 clearly part of a bigger      15 document --</p> <p>16 MR. BAKER: Sure.</p> <p>17 MS. MILLER: -- there's      18 actually no context given the page      19 you're showing the witness.</p> <p>20 MR. BAKER: I understand.      21 All right.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. So this says 5/3/11, Devlin,      24 F. Do you see that?</p>

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<p>1 A. Right. I do.</p> <p>2 Q. Okay. This has that same</p> <p>3 sort of thing on it. It says, "DEA</p> <p>4 expects CVS to prevent suspicious orders</p> <p>5 from being filled out of our DCs. The</p> <p>6 current IRR does not provide the proper</p> <p>7 information to meet the DEA's needs. We</p> <p>8 need control drugs to be monitored by</p> <p>9 active ingredient. Currently the control</p> <p>10 drugs are monitored by item. The IRR</p> <p>11 loses all order history when the info on</p> <p>12 the item changes, causing CVS to be</p> <p>13 noncompliant with DEA expectations."</p> <p>14 Is that what the document</p> <p>15 says?</p> <p>16 MS. MILLER: I object to the</p> <p>17 use of the document for the</p> <p>18 reasons I stated.</p> <p>19 MR. BAKER: Understood.</p> <p>20 MS. MILLER: You may go</p> <p>21 ahead and answer.</p> <p>22 MR. BAKER: Understood.</p> <p>23 THE WITNESS: That is what</p> <p>24 the document states.</p>	<p>1 Do you see that?</p> <p>2 A. I do.</p> <p>3 Q. All right. Let's talk about</p> <p>4 that. This is October 12, 2010. This is</p> <p>5 John Mortelliti. At that point is he in</p> <p>6 Lumberton to your knowledge?</p> <p>7 A. Yes, I believe his -- yes,</p> <p>8 his office --</p> <p>9 Q. Okay.</p> <p>10 A. -- was in Lumberton.</p> <p>11 Q. Okay. And this e-mail says,</p> <p>12 "I" -- I presume that means John</p> <p>13 Mortelliti -- "am handling the control</p> <p>14 drug IRR for the time being."</p> <p>15 Is that what it says?</p> <p>16 A. That's what it says, yes.</p> <p>17 Q. Okay. And it says, "You may</p> <p>18 want to forward it to Dean." Then it</p> <p>19 says, "Dean, there is a rewrite we are</p> <p>20 trying to get approved for the control</p> <p>21 drug IRR. The current report shows</p> <p>22 control drugs by item instead of active</p> <p>23 ingredient, such as PSE. We thought this</p> <p>24 would be a great idea at the time, but</p>
<p>1 BY MR. BAKER:</p> <p>2 Q. Did you write that in there?</p> <p>3 MS. MILLER: Objection.</p> <p>4 THE WITNESS: I do not</p> <p>5 recall writing that. And in</p> <p>6 looking at my -- that's not the</p> <p>7 type of language I would use.</p> <p>8 BY MR. BAKER:</p> <p>9 Q. Okay.</p> <p>10 (Document marked for</p> <p>11 identification as Exhibit</p> <p>12 CVS-Devlin-P-82.)</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Let's pull exhibit number</p> <p>15 82. This is an e-mail dated 10/12/2010</p> <p>16 from John have Mortelliti to Todd Janson.</p> <p>17 Who is Todd Janson?</p> <p>18 A. I believe he was a loss</p> <p>19 prevention manager in Vero Beach,</p> <p>20 Florida.</p> <p>21 Q. Okay. Let's read this. It</p> <p>22 says, "Todd, I sent you an e-mail about</p> <p>23 two weeks ago explaining why I'm handling</p> <p>24 the control drug IRR for the time being."</p>	<p>1 what we found was that the system cannot</p> <p>2 match historical data to an item if the</p> <p>3 manufacturer changes the name of the</p> <p>4 item. Todd can forward you the e-mail.</p> <p>5 Example, hydro five milligrams can be</p> <p>6 changed to hydro, milligram five. Same</p> <p>7 item, just a five in front of milligram.</p> <p>8 The system cannot match this item because</p> <p>9 of the change and, therefore, loses</p> <p>10 historical data. This is why you're</p> <p>11 seeing zero for historical ordering,</p> <p>12 usually in Lag 3 to 6."</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Okay. Was this brought to</p> <p>16 your attention, this issue with respect</p> <p>17 to active ingredient and how it was being</p> <p>18 used and the issues that it was causing</p> <p>19 with relation to matching historical data</p> <p>20 to an item?</p> <p>21 MS. MILLER: Objection.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Was this brought to your</p> <p>24 attention?</p>

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<p>1 MS. MILLER: Objection.</p> <p>2 THE WITNESS: I just -- I</p> <p>3 recall -- I recall the change of</p> <p>4 the item to active ingredient.</p> <p>5 But my recollection was based more</p> <p>6 on the manufacturer issue. As far</p> <p>7 as the loss, I just -- I don't</p> <p>8 recall that.</p> <p>9 BY MR. BAKER:</p> <p>10 Q. Okay. If there's a loss of</p> <p>11 historical data, how does that affect the</p> <p>12 efficacy of the system?</p> <p>13 MS. MILLER: Objection.</p> <p>14 THE WITNESS: There would</p> <p>15 still be other components. You</p> <p>16 know, and again, I don't know the</p> <p>17 details of the algorithm. It</p> <p>18 wasn't just that one piece. So it</p> <p>19 would still be -- the system would</p> <p>20 still be up and running.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. Do you know at what point in</p> <p>23 time this issue was dealt with to where</p> <p>24 there was a change from active</p>	<p>1 concept of --</p> <p>2 MS. MILLER: Oh. Are you</p> <p>3 asking questions --</p> <p>4 MR. BAKER: Yes.</p> <p>5 MS. MILLER: -- outside the</p> <p>6 document?</p> <p>7 MR. BAKER: Yes, yes. Let's</p> <p>8 move on to the next one. I'll</p> <p>9 give you a document in just a</p> <p>10 second.</p> <p>11 BY MR. BAKER:</p> <p>12 Q. Have you ever heard of the</p> <p>13 concept of same store, same month orders?</p> <p>14 A. Same store, same --</p> <p>15 Q. Same month orders?</p> <p>16 A. No, I don't recall that.</p> <p>17 Q. Okay. Let me ask you</p> <p>18 hypothetically to assume this is what it</p> <p>19 means.</p> <p>20 If you have a pharmacy that</p> <p>21 orders in Week 1, and orders, say, 5,000</p> <p>22 hydrocodone combination products. And</p> <p>23 then Week 2 orders the same 5,000</p> <p>24 hydrocodone combination products, then</p>
<p>1 ingredient -- I mean a change from item</p> <p>2 description to active ingredient?</p> <p>3 A. Yeah, I don't recall the</p> <p>4 time frame.</p> <p>5 Q. Was it ever changed?</p> <p>6 A. I believe at one point it</p> <p>7 was changed, yes.</p> <p>8 Q. Was it ever changed before</p> <p>9 you left?</p> <p>10 A. Yeah, I believe it was.</p> <p>11 Q. Do you know when in the</p> <p>12 context of before you left it was ever</p> <p>13 changed, if at all?</p> <p>14 MS. MILLER: Objection.</p> <p>15 THE WITNESS: I believe it</p> <p>16 was changed. I just -- I can't</p> <p>17 recall the exact time it was</p> <p>18 changed.</p> <p>19 MR. BAKER: Pull Exhibit 92.</p> <p>20 (Document marked for</p> <p>21 identification as Exhibit</p> <p>22 CVS-Devlin-P-92.)</p> <p>23 BY MR. BAKER:</p> <p>24 Q. Have you ever heard of the</p>	<p>1 Week 3 orders that same 5,000 hydrocodone</p> <p>2 combination products, and then Week 4</p> <p>3 orders those same 5,000 hydrocodone</p> <p>4 combination products.</p> <p>5 That's same store, same</p> <p>6 month, making the order of the same</p> <p>7 product. Do you understand what I'm</p> <p>8 talking about if, hypothetically, that's</p> <p>9 what I'm trying to present to you? Do</p> <p>10 you understand that?</p> <p>11 MS. MILLER: Objection.</p> <p>12 BY MR. BAKER:</p> <p>13 Q. Do you understand that?</p> <p>14 MS. MILLER: Objection.</p> <p>15 THE WITNESS: I understand</p> <p>16 you saying a store four weeks in a</p> <p>17 row is ordering 5,000.</p> <p>18 BY MR. BAKER:</p> <p>19 Q. That's an example of same</p> <p>20 store, same month ordering.</p> <p>21 A. Okay.</p> <p>22 Q. So now do you understand</p> <p>23 what I'm saying when I say same store,</p> <p>24 same month order?</p>

<p style="text-align: right;">Page 334</p> <p>1 A. Yes. I don't recall that 2 term before.</p> <p>3 Q. Okay. That's fine.</p> <p>4 A. I'll follow along with --</p> <p>5 Q. I'm just trying to make sure 6 we are on the same wavelength, that we're 7 talking the same language, so when I say 8 same store, same month, there's not this 9 disconnect, that you actually understand 10 what I'm talking about. Do you 11 understand what I'm talking about now 12 when I say same store, same month 13 ordering?</p> <p>14 A. Consistently the same amount 15 being ordered --</p> <p>16 Q. It doesn't have to be the 17 same amount. Just simply the same store, 18 making an order the same month, in other 19 words more than one order in a month?</p> <p>20 MS. MILLER: Objection.</p> <p>21 THE WITNESS: So I thought 22 the example you were giving you 23 said Week 1, 5,000, Week 2, 5,000.</p> <p>24 BY MR. BAKER:</p>	<p style="text-align: right;">Page 336</p> <p>1 Q. Well, let's get away from 2 the example.</p> <p>3 A. That's what you're giving 4 me.</p> <p>5 Q. But every time I talk to 6 you, you act like you don't know what the 7 heck I'm talking about. So I'm trying to 8 be plain and simple with you.</p> <p>9 A. All right. Okay. Sir, I'm 10 carefully listening to your question.</p> <p>11 Q. I know you are.</p> <p>12 MS. MILLER: Let him -- give 13 him a chance to answer it. Ask 14 the question.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. But if the same store orders 17 in the same month, that's called same 18 store, same month ordering in the context 19 of my questioning.</p> <p>20 A. Irregardless of quantity?</p> <p>21 Q. Irregardless -- irrespective 22 of quantity.</p> <p>23 A. Okay.</p> <p>24 Q. Okay. I want you to look at</p>
<p style="text-align: right;">Page 335</p> <p>1 Q. No, sir. It doesn't have to 2 be the exact same amount. If the same 3 store makes an order in the same month, 4 in other words more than one order per 5 month.</p> <p>6 Do you understand what I'm 7 talking about?</p> <p>8 MS. MILLER: Objection.</p> <p>9 BY MR. BAKER:</p> <p>10 Q. You're acting dumbfounded 11 like you don't know what I'm talking 12 about. The same store makes an order 13 sequentially during the weeks of the 14 months. That's the same store making an 15 order in the same month. Is that not --</p> <p>16 MS. MILLER: You're just 17 saying the store is making an 18 order each week in the month?</p> <p>19 MR. BAKER: Correct.</p> <p>20 BY MR. BAKER:</p> <p>21 Q. Do you understand that?</p> <p>22 A. I understand that. The 23 example you gave me though, you were 24 saying the same quantity.</p>	<p style="text-align: right;">Page 337</p> <p>1 Document Number 92, and go to 83065. 2 Okay. Now, this is an attachment to an 3 e-mail dated 11/29/2012; is that correct?</p> <p>4 MS. MILLER: Bill, I'm 5 sorry. The document that I have 6 is 83855 as the beginning Bates.</p> <p>7 MR. BAKER: Correct.</p> <p>8 MS. MILLER: Oh, I thought 9 you said 83065.</p> <p>10 MR. BAKER: It's a packet.</p> <p>11 MS. MILLER: Because I 12 don't --</p> <p>13 MR. BAKER: Give me the one 14 that attaches that.</p> <p>15 BY MR. BAKER:</p> <p>16 Q. Okay. I'm looking at 83064. 17 Do you see that. Do you have that?</p> <p>18 MS. MILLER: I don't have 19 that. When you referred to 20 packet, I think I just got one 21 e-mail.</p> <p>22 MR. BAKER: I'm sorry. I 23 apologize.</p> <p>24 MS. MILLER: No, I want to</p>

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<p>1 make sure we're talking about the 2 same thing.</p> <p>3 MR. BAKER: Do you have the 4 e-mail?</p> <p>5 MS. MILLER: Do you have -- 6 so it's dated November 29, 2012.</p> <p>7 THE WITNESS: I see that.</p> <p>8 MS. MILLER: Is that the 9 start?</p> <p>10 MR. BAKER: I'm looking at 11 83064, 83065, and 83066. Do y'all 12 have those?</p> <p>13 MS. MILLER: We have that. 14 And so is that Exhibit 92?</p> <p>15 MR. BAKER: That's what I'm 16 asking him about. That's what I'm 17 asking him about.</p> <p>18 MS. MILLER: Is this --</p> <p>19 MR. BAKER: It's probably a 20 couple --</p> <p>21 MS. MILLER: The exhibit -- 22 I want for the record -- I just to 23 make sure.</p> <p>24 MR. BAKER: Have both be the</p>	<p>1 the e-mail. To the top. Do you see 2 this?</p> <p>3 A. Yes.</p> <p>4 Q. Okay. This says, 5 "Opportunities document." 6 Do you see that?</p> <p>7 A. Yes.</p> <p>8 Q. "SOM plan." 9 Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Okay. This is 11/29/12.</p> <p>12 Now, go to the bottom of the document, 13 and look at the Bates number. Do you see 14 the Bates number here, 83064? Do you see 15 that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. Go to the next page.</p> <p>18 At the top it says, "Opportunities, 19 current SOM process."</p> <p>20 Do you see that? Do you see 21 it?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. Look at the bottom.</p> <p>24 It's 83065.</p>
<p>1 exhibit, composite.</p> <p>2 MS. MILLER: Okay.</p> <p>3 Composite exhibit. So the first 4 e-mail is the November 29, 2012.</p> <p>5 MR. BAKER: Correct.</p> <p>6 Absolutely.</p> <p>7 MS. MILLER: I got it now.</p> <p>8 BY MR. BAKER:</p> <p>9 Q. Okay. All right. Look at 10 the e-mail now dated 11/29/12. Do you 11 see that at the bottom? Do you see it?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Do you see where it 14 says Thursday, November 29, 2012? Do you 15 see that?</p> <p>16 A. Yes.</p> <p>17 Q. Okay. It says, "Team, 18 here's the project plan and process flow 19 that Craig and I will review with you at 20 2:00 p.m. eastern today. Thank you, 21 Tom."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Now, go to the top of</p>	<p>1 Do you see that?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Now, go to the bottom 4 of the next document. It's 83066.</p> <p>5 Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. These are the documents that 8 I'm asking you questions about right now. 9 Do you understand that?</p> <p>10 A. Yes, sir.</p> <p>11 Q. Okay. So if you go to the 12 second page, 83065. Do you see that? 13 Under "Opportunities, current SOM 14 process."</p> <p>15 Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. It says, "If order is 18 cleared on first of month and cleared, 19 and store then orders again that month, 20 it won't be looked at."</p> <p>21 Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Okay. What does that mean?</p> <p>24 A. I do not know. This</p>

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<p>1 document was -- this document was      2 produced after I left the company.      3 Q. Okay. It says, "If system      4 flags it, we are required to look at it      5 and document why it was released.      6 Currently, we're simply releasing order      7 based on past due diligence on a      8 different order."      9 Do you see that?      10 A. I do.      11 Q. Okay. Now, what does that      12 mean? Do you know?      13 A. I do not know.      14 Q. Okay. Was this the same      15 system that was in place when you were      16 there or is this a different system or do      17 you know?      18 A. I would not know that.      19 Q. Okay. Do you know whether      20 or not there was a change in the system      21 between the time that you left in October      22 2012 and the time that this e-mail and      23 this SOM, "Opportunities, current SOM      24 process" memorandum was generated?</p>	<p>1 any of the orders of Schedule III      2 narcotics that were being made by CVS      3 pharmacies to outside vendors were being      4 monitored by those outside vendors, do      5 you know?      6 A. Is there an exhibit I'm      7 supposed to be looking at?      8 Q. Not right this second. I'm      9 just asking the question, do you know?      10 A. Can you repeat the question?      11 Q. If an outside vendor was      12 selling a narcotic, a Schedule III      13 narcotic to a CVS pharmacy while you were      14 employed at CVS, do you know whether or      15 not that outside vendor was monitoring      16 that order that was made by the CVS      17 pharmacy to its company?      18 MS. MILLER: Object --      19 objection.      20 BY MR. BAKER:      21 Q. Do you know?      22 A. I believe I was told they      23 were, but it's not something I ever      24 looked into.</p>
<p style="text-align: center;">Page 343</p> <p>1 A. I would have no idea.      2 Q. Okay. Who took over your      3 position when you left?      4 A. It was -- I believe it was      5 an open position. And I believe they      6 hired someone from the outside.      7 Q. Okay. Who is Craig Schiavo?      8 A. I have no idea.      9 Q. You never met him?      10 A. Not that I recall.      11 Q. Who is Tom Bourque?      12 A. I have no idea.      13 Q. Did Aaron Burtner have      14 anything to do with the SOM process after      15 you left to your knowledge?      16 A. I believe he did, yes.      17 Q. Okay.      18 (Document marked for      19 identification as Exhibit      20 CVS-Devlin-P-53.)      21 BY MR. BAKER:      22 Q. Let's look at Exhibit      23 Number 53, please.      24 Do you know whether or not</p>	<p style="text-align: center;">Page 345</p> <p>1 Q. Okay. So the question is do      2 you know one way or the other.      3 A. I couldn't say.      4 Q. You could not say. Okay.      5 So was CVS monitoring the purchase by its      6 pharmacies of outside vendor products      7 that were Schedule III narcotics?      8 MS. MILLER: Objection.      9 THE WITNESS: Not as part of      10 my responsibility.      11 BY MR. BAKER:      12 Q. Okay. Let me ask you to      13 look at Document Number 53. Exhibit 53.      14 Now, this document is dated      15 10/8 of 2012. Do you see that?      16 A. I do.      17 Q. Okay. Were you still there      18 10/8 of 2012?      19 A. Yes.      20 Q. Okay. And when you were      21 there at 10/8 of 2012, what was your      22 position?      23 A. Director of logistics loss      24 prevention.</p>

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<p>1 Q. And was the suspicious order      2 monitoring run under that department or      3 not?</p> <p>4 MS. MILLER: Objection.</p> <p>5 BY MR. BAKER:</p> <p>6 Q. At that time?</p> <p>7 A. Yes.</p> <p>8 Q. Okay. I'd like to ask you      9 to look down on this memorandum, this,      10 this memorandum that is attached to --      11 actually, if you look at the front page,      12 it's October 5, 2012, it says, from Pam      13 Hinkle to Frank Devlin, conference call      14 notes, 10/25/12.</p> <p>15 Do you see that?</p> <p>16 A. I do.</p> <p>17 Q. Okay. So you were on a      18 conference call or was this being sent to      19 you from something Pam Hinkle had      20 attended on a conference call. Which one      21 is it?</p> <p>22 A. I -- I don't recall being on      23 this conference call.</p> <p>24 Q. But it appears this was sent</p>	<p>1 notice at this point in time.</p> <p>2 Q. Okay. The second bullet      3 point there says, "AGI will develop an      4 algorithm to fix issues with existing      5 algorithm used for SOM program."</p> <p>6 Do you see that?</p> <p>7 A. I do see that.</p> <p>8 Q. What were the existing      9 issues that needed to be fixed?</p> <p>10 A. I do not know.</p> <p>11 Q. Were they the active      12 ingredient for example, was that      13 something that needed to be fixed?</p> <p>14 MS. MILLER: Objection.</p> <p>15 THE WITNESS: I'm not -- I'm      16 not sure of what the issues would      17 have been. As I thought the      18 active ingredient, I thought that      19 had already been changed.</p> <p>20 BY MR. BAKER:</p> <p>21 Q. Was there an issue with same      22 store/same month ordering not running      23 through the SOM process that needed to be      24 fixed?</p>
<p>1 to you on October 5, 2012, does it not?</p> <p>2 A. Yes.</p> <p>3 Q. Okay. So go to the next      4 page. And do you see, up at the top it      5 says AG/CVS discussion -- AGI/CVS      6 discussion. Do you know who AGI was?</p> <p>7 A. I believe they were an      8 analytics company.</p> <p>9 Q. Okay. Was this a different      10 analytics company than the Cegedim      11 company that Mr. Buzzeo ran?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. It talks about      14 attendees, and it names all the      15 attendees. And you are an attendee. Do      16 you see here?</p> <p>17 A. I do see that.</p> <p>18 Q. Frank Devlin, that's you.</p> <p>19 So you -- did you attend this conference      20 call right before you left?</p> <p>21 A. I don't recall.</p> <p>22 Q. What date did you leave CVS?</p> <p>23 A. It may have been mid -- mid      24 October, but I may have already given my</p>	<p>1 MS. MILLER: Objection.</p> <p>2 THE WITNESS: I do not know.</p> <p>3 BY MR. BAKER:</p> <p>4 Q. Was there a problem with      5 outside vendor orders that needed to be      6 fixed --</p> <p>7 MS. MILLER: Objection.</p> <p>8 BY MR. BAKER:</p> <p>9 Q. -- in terms of them being      10 monitored or not monitored?</p> <p>11 MS. MILLER: Objection.</p> <p>12 THE WITNESS: I do not know.</p> <p>13 BY MR. BAKER:</p> <p>14 Q. Was there anything that      15 needed to be fixed in terms of the change      16 of a drug name by a manufacturer that      17 causes history to get lost in the      18 suspicious order monitoring program that      19 was already in place that needed to be      20 fixed?</p> <p>21 MS. MILLER: Objection.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. Was there?</p> <p>24 MS. MILLER: Objection.</p>

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<p>1           THE WITNESS: I believe that      2       issue had been addressed.</p> <p>3 BY MR. BAKER:</p> <p>4       Q. Okay. What issues needed to      5 be fixed that you attended this      6 conference call concerning?</p> <p>7       A. I don't -- I don't recall      8 attending the conference call.</p> <p>9       Q. All right. Let's skip down      10 in the document. It says, "All orders      11 generated by outside vendors are not      12 pushed through the SOM process."</p> <p>13      Do you remember that being      14 part of what was discussed in the      15 conference call?</p> <p>16      MS. MILLER: Where is that,      17 Bill? I'm sorry.</p> <p>18      MR. BAKER: Right here.</p> <p>19      THE WITNESS: I don't recall      20 attending the conference call.</p> <p>21 BY MR. BAKER:</p> <p>22      Q. Okay. Is that what the      23 document says, that there's a conference      24 call concerning that particular --</p>	<p>1 10/5/2012; is that right?</p> <p>2       A. Correct.</p> <p>3       Q. Okay. And it says note --</p> <p>4 "Notes from call provided by Aaron."</p> <p>5       Do you know who Aaron was?</p> <p>6 Is that Aaron Burtner?</p> <p>7       A. I'm surmising that may be.</p> <p>8       Q. Okay. Did you know any      9 other Aaron that worked at CVS that would      10 have attended this conference call other      11 than Aaron Burtner?</p> <p>12      A. No, not -- not that I can      13 recall.</p> <p>14      Q. Okay. Go to the next page.      15 It says 10/5/2012 AGI/CVS discussion.      16 And it says attendees. And it lists you,      17 right?</p> <p>18      A. My name is there.</p> <p>19      Q. Okay. And then go down to      20 the bottom. What does that sentence say      21 where it says "begins with all orders,"      22 that's up on your screen?</p> <p>23      MS. MILLER: Again, he's      24 looking at the hardcopy.</p>
<p>1 that -- that that particular issue was      2 addressed, that all orders generated from      3 outside vendors are not pushed through      4 the SOM process? Is that what the      5 document says?</p> <p>6       MS. MILLER: Objection.</p> <p>7       THE WITNESS: It appears to      8 be what is stated on the document,      9 yes.</p> <p>10 BY MR. BAKER:</p> <p>11      Q. All right. Let's go back      12 through this series of questions one more      13 time, make sure I get this on record      14 properly.</p> <p>15      This is an e-mail dated      16 October 5, 2012, and which you are a      17 party to, correct?</p> <p>18      A. It was sent, it looks      19 like -- well -- it looks like, yes, this      20 e-mail was sent to me, I don't recall the      21 e-mail.</p> <p>22      Q. Okay. October 5, 2012. And      23 at that point it attaches what appears to      24 be subject conference call note,</p>	<p>1       BY MR. BAKER:      2       Q. What does it say?      3       MS. MILLER: He is --      4       THE WITNESS: "All orders      5 generated for outside vendors are      6 not pushed through the SOM      7 process."</p> <p>8 BY MR. BAKER:      9       Q. I could not hear you when      10 you said -- after you said outside      11 vendors.      12       "All orders generated for      13 outside vendors," now finish the sentence      14 please.</p> <p>15      A. "Are not pushed through the      16 SOM process."</p> <p>17      Q. Okay.</p> <p>18      A. That's what is stated on the      19 document.</p> <p>20      Q. Okay. It's -- is it true      21 that all orders generated for outside      22 vendors were not pushed through the SOM      23 process in the context of CVS pharmacies      24 making orders from outside vendors of</p>

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<p>1 narcotics?</p> <p>2 MS. MILLER: Objection.</p> <p>3 BY MR. BAKER:</p> <p>4 Q. Is that true?</p> <p>5 MS. MILLER: Objection.</p> <p>6 THE WITNESS: I don't know.</p> <p>7 BY MR. BAKER:</p> <p>8 Q. When you were there, did you 9 have any knowledge one way or the other 10 whether or not that was true?</p> <p>11 MS. MILLER: Objection. To 12 the extent you recall.</p> <p>13 THE WITNESS: Can you repeat 14 the question?</p> <p>15 BY MR. BAKER:</p> <p>16 Q. When you were there at CVS 17 in October 2012 attending that conference 18 call --</p> <p>19 A. I don't recall attending the 20 conference call.</p> <p>21 Q. Okay. Do you have any 22 reason to disagree with what this 23 memorandum indicates in terms of whether 24 all orders generated for outside vendors</p>	<p>1 quick break? A quick --</p> <p>2 MR. BAKER: Somebody need to 3 go to the bathroom or --</p> <p>4 MS. MILLER: I would like to 5 if we could.</p> <p>6 MR. BAKER: Okay. Go ahead.</p> <p>7 THE VIDEOGRAPHER: Going off 8 the record. The time is 3:00 p.m. 9 (Short break.)</p> <p>10 THE VIDEOGRAPHER: We are 11 going back on the record.</p> <p>12 Beginning of Media File 9. The 13 time is 3:11.</p> <p>14 (Document marked for 15 identification as Exhibit 16 CVS-Devlin-P-106.)</p> <p>17 BY MR. BAKER:</p> <p>18 Q. Let me show you Exhibit 106, 19 Mr. Devlin. Exhibit 106 begins with 20 Bates 29867. It's an e-mail from 21 Mr. Craig Schiavo to Aaron Burtner. And 22 this is the month after you left. This 23 is in November of 2012; is that correct?</p> <p>24 A. November 27, 2012, yes, I</p>
<p>1 not -- or were not pushed through the SOM 2 process, do you have any reason to 3 disagree with that?</p> <p>4 A. I don't recall attending the 5 conference call, so I don't feel 6 qualified to comment on it.</p> <p>7 Q. Okay. Do you feel qualified 8 to disagree with that statement in that 9 memo, is what I asked you.</p> <p>10 A. What's on the memo is on the 11 memo.</p> <p>12 Q. Okay. Do you feel qualified 13 to disagree with it one way or the other?</p> <p>14 MS. MILLER: Objection.</p> <p>15 Asked and answered.</p> <p>16 THE WITNESS: I don't feel 17 qualified to comment on it.</p> <p>18 BY MR. BAKER:</p> <p>19 Q. Okay. So then you could not 20 disagree with it; is that correct?</p> <p>21 A. I could not agree nor 22 disagree.</p> <p>23 Q. Okay. Next.</p> <p>24 MS. MILLER: Can we take a</p>	<p>1 had been gone a month.</p> <p>2 Q. Okay. And what day in 3 October did you leave? Do you remember?</p> <p>4 A. I believe it was 5 mid-October.</p> <p>6 Q. Okay. And so I want to ask 7 you if you could address some of the 8 things that are in this SOM end state 9 enhancement solution that is submitted in 10 the context of this e-mail because these 11 things would have been in existence in 12 November, which is just within a month 13 after you left. Okay. Are you ready?</p> <p>14 A. Sure.</p> <p>15 Q. Okay. Let's go over this. 16 So SOM end state enhancement solution. 17 It says, "What are the requirements?" 18 And it goes through 21 C.F.R. 1301.74(b).</p> <p>19 You've seen that. We've 20 gone over this today, correct? 21 C.F.R. 21 1301.74(b)?</p> <p>22 A. I believe we did, yes.</p> <p>23 Q. Okay. You remember 24 Mr. Rannazzisi's letters from 2006 and</p>

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<p>1 2007 --</p> <p>2 A. Yes.</p> <p>3 Q. -- that were attached to the</p> <p>4 e-mail in 2008? Do you remember that?</p> <p>5 A. I do.</p> <p>6 Q. Okay. And it says, "Actions</p> <p>7 to be taken to enhance CVS process." It</p> <p>8 says, "Current algorithm, enhancement to</p> <p>9 algorithm, create new algorithm. Review</p> <p>10 our contracts with Buzzeo. Were they</p> <p>11 fired?"</p> <p>12 My question to you is, after</p> <p>13 reading this, does this refresh your</p> <p>14 recollection as to whether or not there</p> <p>15 was discussion about firing Mr. Buzzeo's</p> <p>16 company and trying to hire another</p> <p>17 company?</p> <p>18 MS. MILLER: Objection and</p> <p>19 instruct you not to answer to the</p> <p>20 extent there are any</p> <p>21 attorney/client communications.</p> <p>22 BY MR. BAKER:</p> <p>23 Q. I'm not asking you what your</p> <p>24 attorneys discussed with you. I'm</p>	<p>1 BY MR. BAKER:</p> <p>2 Q. Was it?</p> <p>3 MS. MILLER: Objection.</p> <p>4 THE WITNESS: I believe AGI,</p> <p>5 that that was the other company we</p> <p>6 were having discussions with.</p> <p>7 BY MR. BAKER:</p> <p>8 Q. Okay. And then under bullet</p> <p>9 Point 3, it says, "We will need" -- "we</p> <p>10 will need to understand what criteria the</p> <p>11 algorithm looks at and ensure it complies</p> <p>12 with DEA regulations by monitoring each</p> <p>13 store's orders of unusual size, orders</p> <p>14 deviating substantially from a normal</p> <p>15 pattern, and orders of unusual</p> <p>16 frequency," correct?</p> <p>17 A. That's what it states, yes.</p> <p>18 Q. Okay. Let me ask, when you</p> <p>19 were employed by CVS, did you really</p> <p>20 understand what the algorithm was looking</p> <p>21 at or not?</p> <p>22 MS. MILLER: Objection.</p> <p>23 THE WITNESS: I'd say from a</p> <p>24 high level, I did.</p>
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<p>1 asking, do you recall any -- any notion</p> <p>2 that right before you left there was</p> <p>3 discussions about firing Mr. Buzzeo's</p> <p>4 company and hiring another company?</p> <p>5 MS. MILLER: Objection.</p> <p>6 Same. Instruct you not to answer</p> <p>7 to the extent that the question</p> <p>8 implicates any attorney/client --</p> <p>9 THE WITNESS: It does.</p> <p>10 MS. MILLER: -- information.</p> <p>11 BY MR. BAKER:</p> <p>12 Q. It requires you to tell me</p> <p>13 what your attorneys said?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. So the next thing</p> <p>16 says, if you go down here to -- go up.</p> <p>17 Go up. It says, "Review AGI proposal."</p> <p>18 Do you see that?</p> <p>19 A. I do.</p> <p>20 Q. All right. Was that</p> <p>21 Analysis Group? Was that the new company</p> <p>22 that you were thinking about dealing with</p> <p>23 before you left?</p> <p>24 MS. MILLER: Objection.</p>	<p>1 BY MR. BAKER:</p> <p>2 Q. Okay. What was the</p> <p>3 algorithm looking at from a high level?</p> <p>4 MS. MILLER: Objection.</p> <p>5 THE WITNESS: It was looking</p> <p>6 at order activity going on in the</p> <p>7 pharmacies, what type of items</p> <p>8 were being ordered, frequency,</p> <p>9 quantity. Those are a few of the</p> <p>10 components I can remember. I</p> <p>11 believe there are a lot more, but</p> <p>12 that's all I can remember at this</p> <p>13 time.</p> <p>14 BY MR. BAKER:</p> <p>15 Q. What about in relation to</p> <p>16 thresholds, what was the algorithm</p> <p>17 looking at?</p> <p>18 MS. MILLER: Objection.</p> <p>19 THE WITNESS: I don't recall</p> <p>20 that.</p> <p>21 BY MR. BAKER:</p> <p>22 Q. You don't recall that?</p> <p>23 A. I don't recall.</p> <p>24 Q. Was the algorithm look --</p>

<p style="text-align: right;">Page 362</p> <p>1 was the algorithm looking at anything in 2 reference to thresholds? 3 MS. MILLER: Objection. 4 THE WITNESS: Yeah, I 5 just -- I don't recall that. 6 BY MR. BAKER: 7 Q. All right. Do you -- do you 8 remember when we looked at the 8/25/10 9 SOM SOP document, do you remember that? 10 A. Yes. 11 Q. Exhibit Number 97. It 12 talked about thresholds being the basis 13 of the SOM system. Do you recall that? 14 A. Yes. That was -- 15 MS. MILLER: Would you like 16 to look at the document? 17 MR. BAKER: Yes, go ahead. 18 Pull it out. 19 MS. MILLER: Exhibit 97? 20 MR. BAKER: Exhibit 97. 21 THE WITNESS: I looked at a 22 lot of documents today. 23 BY MR. BAKER: 24 Q. Okay. Here it is.</p>	<p style="text-align: right;">Page 364</p> <p>1 were the primary tool, and so what I'm 2 asking, what do these algorithms do to 3 measure the primary tool that CVS was 4 using in the context of suspicious order 5 monitoring? 6 MS. MILLER: Objection. 7 THE WITNESS: You know, 8 again with the algorithm, I mean I 9 defer it to the expertise of the 10 DEA consultants that we hired. 11 BY MR. BAKER: 12 Q. Okay. So now, let's go to 13 the -- back to the other document, 14 Number 106, please. And it talks about 15 end state enhancement solutions. This is 16 again the November 2012 document, the 17 month after you left. You understand 18 that, correct? 19 A. Yes, sir. 20 Q. All right. It says here, 21 under the first checkmark, it says, "Each 22 store should have its own purchases 23 monitored separately based upon their 24 purchasing patterns to identify orders</p>
<p style="text-align: right;">Page 363</p> <p>1 A. Here we go. Okay. 2 Q. Okay. 3 A. Found it. Okay. 4 Q. Go to Bates Number 88997. 5 A. Okay. 6 Q. All right. It says here 7 under the item review report, "These 8 thresholds are the primary tool to 9 prevent stores from purchasing excessive 10 or potentially suspicious control drug 11 orders." 12 Do you see that? 13 A. I do see that. 14 Q. Okay. What did the 15 algorithm that was being implemented 16 during the time that you were at CVS do 17 to measure these thresholds, if anything? 18 MS. MILLER: Objection. 19 THE WITNESS: I'm just -- I 20 just can't recall in particular 21 how the algorithm was evaluating 22 the threshold. 23 BY MR. BAKER: 24 Q. Okay. But the thresholds</p>	<p style="text-align: right;">Page 365</p> <p>1 deviating from its normal buying pattern 2 and to identify orders of unusual 3 frequency," correct? 4 A. Yeah -- 5 MS. MILLER: Bill, can 6 you -- sorry, are you underneath 7 the -- the review AGI proposal? 8 MR. BAKER: Yeah. 9 MS. MILLER: Oh, okay. 10 MR. BAKER: Yeah. 11 MS. MILLER: And it's the -- 12 under that section. 13 THE WITNESS: The first 14 checkmark under trade? 15 MR. BAKER: Right. Right. 16 Right. Okay. 17 BY MR. BAKER: 18 Q. So under the algorithm that 19 was being used at CVS while you were 20 there, was -- did it monitor each store, 21 have its own purchasers -- purchases 22 monitored separately based upon their own 23 purchasing patterns to identify orders 24 deviating from its normal buying pattern</p>

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<p>1 and to identify orders of unusual      2 frequency, or not, or do you know?      3 A. I believe that was a part of      4 it.      5 Q. Do you know?      6 A. I -- you know, again trying      7 to think back to that time and the actual      8 details. From a high level conceptual, I      9 thought that was a part of it. But I      10 can't say.      11 Q. You don't really know?      12 A. Yeah, I can't say yes or no.      13 Q. Okay. It says, "Orders of      14 unusual size can be determined by      15 comparing the order to previous order      16 sizes, as well as comparing the order to      17 other orders of stores in the area."      18 Do you see that?      19 A. I do.      20 Q. To what extent did the      21 algorithm, if any, that was being      22 implemented when you were at CVS measure      23 the CVS store's order against other      24 orders of stores in the area, if any?</p>	<p>1 there?      2 A. Yeah, I'm not sure if the      3 context as far as what's on the document      4 here exactly what they are referencing,      5 I'm not sure.      6 Q. What -- okay. What drug      7 combination should have been monitored in      8 the context of the CVS suspicious order      9 monitoring system while you were there as      10 it relates to monitoring Schedule III      11 hydrocodone combination products?      12 MS. MILLER: Objection.      13 THE WITNESS: I can't really      14 comment on that. I can't -- I      15 can't recall.      16 BY MR. BAKER:      17 Q. Okay. CVS, during the      18 period of time that you were there, did      19 not have a license to distribute      20 Schedule II narcotics; is that correct,      21 only Schedule III's?      22 A. During what time frame?      23 Q. When you were there.      24 A. Not --</p>
<p>1 A. That would probably -- that      2 would be getting into the details around      3 it. I mean, conceptually that sounds      4 accurate or rings a bell, but how this      5 actually worked within the algorithm, I      6 can't explain that.      7 Q. Do you know if it actually      8 did that or not?      9 MS. MILLER: Objection.      10 THE WITNESS: Again, from a      11 conceptual standpoint, I thought      12 that was one of the components.      13 But again, I can't say how that      14 worked.      15 BY MR. BAKER:      16 Q. All right. The next      17 checkmark says, "Will the system take      18 into account drug combinations."      19 Do you see that?      20 A. I do.      21 Q. Okay. Do you know what drug      22 combinations were being monitored, if at      23 all, through the algorithm-based system      24 that was being used by CVS while you were</p>	<p>1 MS. MILLER: Objection.      2 BY MR. BAKER:      3 Q. Go ahead. During the period      4 of time that you were there, did CVS have      5 a license to distribute Schedule III      6 narcotics?      7 A. Schedule III narcotics, yes.      8 Q. Okay. During the time that      9 you were there, did CVS have a license      10 to distribute Schedule II narcotics?      11 MS. MILLER: Did CVS?      12 MR. BAKER: CVS.      13 THE WITNESS: Being in the      14 name of CVS, I don't believe so.      15 BY MR. BAKER:      16 Q. Okay. To your knowledge,      17 did CVS pharmacies during the period of      18 time that you were there, purchase all of      19 these Schedule II products, Schedule II      20 narcotic products from outside vendors?      21 MS. MILLER: Objection.      22 THE WITNESS: I believe so,      23 because they wouldn't be getting      24 them from the distribution</p>

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<p>1       centers.</p> <p>2 BY MR. BAKER:</p> <p>3       Q. Okay. And were those</p> <p>4 Schedule II narcotic products ever</p> <p>5 monitored by CVS in any way through the</p> <p>6 distribution center or through any system</p> <p>7 within CVS?</p> <p>8       MS. MILLER: Objection.</p> <p>9 BY MR. BAKER:</p> <p>10      Q. To your knowledge?</p> <p>11      A. Not knowing the particulars,</p> <p>12 but I thought the pharmacy operations</p> <p>13 department would have had a methodology</p> <p>14 to do that.</p> <p>15      Q. Okay. Do you know that one</p> <p>16 way or the other?</p> <p>17      A. I don't. I don't. It's not</p> <p>18 something that I was responsible for.</p> <p>19      Q. Okay. Was anybody</p> <p>20 monitoring those products or not?</p> <p>21      MS. MILLER: Objection.</p> <p>22 BY MR. BAKER:</p> <p>23      Q. To your knowledge. Do you</p> <p>24 know?</p>	<p>1       THE WITNESS: Alls I can</p> <p>2 testify, it's not my</p> <p>3 responsibility.</p> <p>4 BY MR. BAKER:</p> <p>5       Q. I know it's not your</p> <p>6 responsibility. My question is, do you</p> <p>7 know if anybody was monitoring it.</p> <p>8       MS. MILLER: Objection.</p> <p>9       Asked and answered.</p> <p>10 BY MR. BAKER:</p> <p>11      Q. I know it wasn't your</p> <p>12 responsibility according to your answer.</p> <p>13 I'm asking do you know if anybody else,</p> <p>14 other than you, because I know you said</p> <p>15 it wasn't your responsibility.</p> <p>16       So do you know if anybody</p> <p>17 within CVS other than you was monitoring</p> <p>18 Schedule II products that were sold by</p> <p>19 CVS pharmacy?</p> <p>20      MS. MILLER: You mean sales</p> <p>21 of those products --</p> <p>22      MR. BAKER: Yes.</p> <p>23      THE WITNESS: Again --</p> <p>24 again, it wasn't my</p>
<p>1       MS. MILLER: He already</p> <p>2 testified that CVS did not</p> <p>3 distribute those products.</p> <p>4       THE WITNESS: Again, you</p> <p>5 know, CVS was not distributing</p> <p>6 Schedule IIs.</p> <p>7 BY MR. BAKER:</p> <p>8       Q. I understand. CVS was</p> <p>9 retail selling Schedule IIs though,</p> <p>10 correct?</p> <p>11      A. I believe so, yes.</p> <p>12      Q. Okay. Was anybody</p> <p>13 monitoring that at CVS, or do you know?</p> <p>14      A. It wasn't my responsibility.</p> <p>15      Q. Do you know if anybody was</p> <p>16 monitoring that?</p> <p>17      MS. MILLER: Objection.</p> <p>18      THE WITNESS: Alls I know it</p> <p>19 wasn't my responsibility.</p> <p>20 BY MR. BAKER:</p> <p>21      Q. Okay. So do you know one</p> <p>22 way or the other if anybody was</p> <p>23 monitoring that?</p> <p>24      MS. MILLER: Objection.</p>	<p>1       responsibility. But the pharmacy</p> <p>2 operations department would have</p> <p>3 been monitoring that.</p> <p>4       I don't. I never saw it. I</p> <p>5 wasn't aware of their system.</p> <p>6 That's just off the top of my</p> <p>7 head.</p> <p>8 BY MR. BAKER:</p> <p>9       Q. Okay. So you really don't</p> <p>10 know?</p> <p>11      MS. MILLER: Objection.</p> <p>12      THE WITNESS: I -- no. No.</p> <p>13 Well again, again I am coming</p> <p>14 back, it wasn't my responsibility.</p> <p>15 BY MR. BAKER:</p> <p>16      Q. Okay.</p> <p>17      A. But I thought in</p> <p>18 recollection that pharmacy operations</p> <p>19 would have been --</p> <p>20      Q. Understand. You think</p> <p>21 pharmacy operations might have been, but</p> <p>22 do you know for sure one way or the</p> <p>23 other?</p> <p>24      A. No, I'm not -- I'm really</p>
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<p>1 not in a position to answer the question,      2 sir.      3 Q. Okay. Fair enough.      4 All right. Go to Page 2 of      5 the document that we were on. We're      6 again on the document dated November 27,      7 2012. And this is the SOM end state      8 enhancement solution document. Again,      9 this is one month after you left,      10 correct?      11 A. Yes.      12 Q. Okay. If you go down to the      13 bottom --      14 A. Month and a half probably,      15 yeah, but -- yes.      16 Q. Yeah. It says, "If an order      17 is flagged, it should not be cut to a      18 smaller quantity in order to be below a      19 threshold and shipped. Orders should be      20 all is shipped if cleared or nothing is      21 shipped."      22 A. I'm sorry, sir, where --      23 Q. Do you see that?      24 A. No, I'm sorry. Where</p>	<p>1 create this document.      2 BY MR. BAKER:      3 Q. I'm not asking for this      4 document. Do you know what it means for      5 an order to be flagged within the SOM      6 system under the algorithm-based system?      7 Flagged, red flagged?      8 A. I would have a definition on      9 it. But I'm not sure.      10 Q. Tell me what it means.      11 A. I'm not sure how that would      12 coincide with this document.      13 Q. I understand. Tell me what      14 it means. Tell me what it means.      15 A. I think as I mentioned      16 before, flagged would be something that      17 would show up on the IRR report,      18 something that we'd want to have some      19 initial review on.      20 Q. Okay. All right. And it      21 says should not be cut to a smaller      22 quantity in order to be below a threshold      23 and shipped.      24 Do you see that?</p>
<p>1 exactly?      2 Q. I'm pointing to it with my      3 finger. Do you see that?      4 A. Is that on 9869?      5 Q. Yes, sir. Do you see that?      6 "If an order is flagged, it      7 should not be cut to a smaller      8 quantity" --      9 A. Okay. I see it now. Okay.      10 Q. Okay. Do you see that?      11 A. I'm seeing it, yes.      12 Q. Okay. Now, do you      13 understand the concept if an order is      14 flagged, what that means?      15 MS. MILLER: Objection. In      16 the context of this proposed      17 algorithm?      18 BY MR. BAKER:      19 Q. In the context of the CVS      20 SOM system while you were there, what it      21 means to be flagged. Do you know what      22 that means?      23 MS. MILLER: Objection.      24 THE WITNESS: I -- I didn't</p>	<p>1 A. I see that.      2 Q. Okay. Was that going on      3 while you were there? In other words,      4 were there orders that were flagged but      5 then somebody would cut the order to a      6 smaller quantity in order to ship it to      7 be below a threshold?      8 MS. MILLER: Objection.      9 THE WITNESS: I don't know.      10 BY MR. BAKER:      11 Q. You don't know?      12 A. I don't recall that. I      13 don't recall hearing that.      14 Q. Okay. You don't know if      15 that was going on or not?      16 MS. MILLER: Objection.      17 THE WITNESS: I can't recall      18 ever hearing that.      19 BY MR. BAKER:      20 Q. Go to the next page, please,      21 the last page of this document. It says      22 here, "Testing of new system before we go      23 live." It talks about, "Do we have the      24 proper resources to handle?"</p>

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<p>1           Do you see that?</p> <p>2       A. I see "new system before go</p> <p>3 live." I see that.</p> <p>4       Q. Okay. When you were at CVS,</p> <p>5 and the system, the suspicious order</p> <p>6 monitoring IRR-related system, was</p> <p>7 centralized into one location, how many</p> <p>8 people, when you left in 2012 were in</p> <p>9 charge of reviewing the IRR daily? How</p> <p>10 many people?</p> <p>11      MS. MILLER: Objection.</p> <p>12      THE WITNESS: Towards the</p> <p>13 end, I believe it was definitely</p> <p>14 more than one. It could have been</p> <p>15 two, three.</p> <p>16 BY MR. BAKER:</p> <p>17      Q. Do you know?</p> <p>18      A. No. I can't -- I can't</p> <p>19 recall 100 percent.</p> <p>20      Q. Okay. At one time we</p> <p>21 discussed it was one person. That was</p> <p>22 Mr. Mortelliti --</p> <p>23      A. Right.</p> <p>24      Q. -- in Lumberton.</p>	<p>1           you showing me a document that</p> <p>2 said that.</p> <p>3 BY MR. BAKER:</p> <p>4       Q. Okay. And at that point,</p> <p>5 was it just one person, two people, or</p> <p>6 what?</p> <p>7       MS. MILLER: Objection.</p> <p>8       Asked and answered.</p> <p>9       THE WITNESS: Yeah, I think</p> <p>10 at that time I said it may have</p> <p>11 been a couple of people.</p> <p>12 BY MR. BAKER:</p> <p>13      Q. Do you know who the couple</p> <p>14 of people were?</p> <p>15      A. Their names escape me.</p> <p>16      Q. Okay. And it stayed there</p> <p>17 until what period of time?</p> <p>18      A. Stayed where?</p> <p>19      Q. In Knoxville?</p> <p>20      A. I believe it was there -- as</p> <p>21 far as when I left, I believe it was</p> <p>22 still there.</p> <p>23      Q. Okay. All right. So when</p> <p>24 you left do you know whether it was one</p>
<p>1           A. Right.</p> <p>2       Q. That was back in 2010,</p> <p>3 right?</p> <p>4       A. Yes. The program evolved.</p> <p>5       Q. Right. And then we talked</p> <p>6 about it got sent out to the distribution</p> <p>7 centers sometime in 2010 after the SOM</p> <p>8 SOP was inserted. Do you remember that?</p> <p>9       A. We did.</p> <p>10      MS. MILLER: Objection.</p> <p>11 BY MR. BAKER:</p> <p>12      Q. Okay. At some time during</p> <p>13 2010, was it sent out to all the</p> <p>14 distribution centers to be done?</p> <p>15      A. There was -- again, I can't</p> <p>16 recall exact dates. But there was a</p> <p>17 period of time where the distribution</p> <p>18 centers were involved in the process.</p> <p>19      Q. And then you remember I</p> <p>20 showed you a document where it said that</p> <p>21 in March of 2011 it was being moved to</p> <p>22 Knoxville? Do you remember that?</p> <p>23      MS. MILLER: Objection.</p> <p>24      THE WITNESS: I do recall</p>	<p>1           person, two people, or more than two</p> <p>2 people that were doing the IRR reviews?</p> <p>3       MS. MILLER: Objection.</p> <p>4       Asked and answered.</p> <p>5 BY MR. BAKER:</p> <p>6       Q. Do you know?</p> <p>7       A. I thought it was two, three</p> <p>8 people doing it.</p> <p>9       Q. Okay. Do you know one way</p> <p>10 or the other?</p> <p>11      A. I -- I'm just trying to</p> <p>12 think back. I mean, it was --</p> <p>13      Q. Who should we ask that would</p> <p>14 have better knowledge than you that you</p> <p>15 think might know the answer to that</p> <p>16 question better than you?</p> <p>17      MS. MILLER: Objection.</p> <p>18      THE WITNESS: It could be a</p> <p>19 variety of resources.</p> <p>20 BY MR. BAKER:</p> <p>21      Q. Okay. Well, give me the --</p> <p>22 give me the person, if you had to get</p> <p>23 that answer from, that you think would be</p> <p>24 the best person to ask that question of,</p>

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<p>1 based upon your knowledge of who worked      2 there at the time.      3 MS. MILLER: Objection.      4 This is Knoxville, Bill?      5 MR. BAKER: Correct.      6 MS. MILLER: Still?      7 MR. BAKER: Correct.      8 THE WITNESS: Probably look      9 at the human resource department      10 and look at job titles.</p> <p>11 BY MR. BAKER:</p> <p>12 Q. How about Pam Hinkle? Would      13 she be somebody to ask that question to,      14 do you think?</p> <p>15 A. Yeah, you can probably ask      16 Pam.</p> <p>17 Q. Okay. Why would she be a      18 good person to ask? What was her      19 position?</p> <p>20 A. Because she would have been      21 overseeing the process.</p> <p>22 Q. In Knoxville?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Very good.</p>	<p>1 so?      2 MR. BAKER: No, I just need,      3 like, two or three. I mean, if      4 y'all need more than that -- I'm      5 just, you know, going to sit here      6 and take a look at my notes.</p> <p>7 THE WITNESS: If you don't      8 mind, I'm going to take a couple      9 minutes.</p> <p>10 THE VIDEOGRAPHER: Going off      11 the record. The time is 3:33.</p> <p>12 (Short break.)</p> <p>13 THE VIDEOGRAPHER: We are      14 going back on the record.</p> <p>15 Beginning of Media File 10. The      16 time is 3:43.</p> <p style="text-align: center;">- - -</p> <p style="text-align: center;">EXAMINATION</p> <p style="text-align: center;">- - -</p> <p>20 BY MR. DeROCHE:</p> <p>21 Q. Mr. Devlin, my name is Jim      22 DeRoche. I have some hopefully brief      23 follow-up questions for you.</p> <p>24 First of all, where do you</p>
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<p>1 All right. So you see down      2 on this list here, it says, "Are OV      3 orders included in the new system?"</p> <p>4 Do you see that?</p> <p>5 A. Yes.</p> <p>6 Q. That's outside vendor      7 orders. I want you to assume that's what      8 that means. So that's being asked.</p> <p>9 So at the time that you left      10 in 2012, October, were outside vendor      11 orders being included within the      12 suspicious order monitoring system at      13 CVS, to your knowledge?</p> <p>14 MS. MILLER: Objection.</p> <p>15 Asked and answered.</p> <p>16 THE WITNESS: I don't      17 believe so.</p> <p>18 MR. BAKER: Okay. I'm going      19 to take a break. And I may pass      20 it over to my partner here, Jimmy      21 DeRoche. Give me just a second to      22 review my notes.</p> <p>23 MS. MILLER: Can we --</p> <p>24 THE WITNESS: Ten minutes or</p>	<p>1 reside now again? I didn't hear that.</p> <p>2 A. I live in Pocasset, in      3 Massachusetts.</p> <p>4 Q. Okay. Is that a suburb of      5 Boston of some sort?</p> <p>6 A. It's actually part of Cape      7 Cod.</p> <p>8 Q. A-ha. Okay.</p> <p>9 When did you come to      10 Washington?</p> <p>11 A. When did I come to      12 Washington?</p> <p>13 Q. Yeah.</p> <p>14 A. I arrived -- let's see,      15 today is Thursday, right?</p> <p>16 Q. Correct.</p> <p>17 A. Yeah, I arrived on Tuesday.</p> <p>18 Q. You arrived on Tuesday?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. And what were you      21 doing for -- since -- between Tuesday and      22 today?</p> <p>23 A. I had some --</p> <p>24 MS. MILLER: Objection.</p>

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<p>1 BY MR. DeROCHE:</p> <p>2 Q. Excuse me? I didn't hear</p> <p>3 what you said.</p> <p>4 MS. MILLER: Go ahead.</p> <p>5 BY MR. DeROCHE:</p> <p>6 Q. You can answer the question,</p> <p>7 sir.</p> <p>8 A. I -- I had some prep time.</p> <p>9 Q. So you prepared for this</p> <p>10 deposition?</p> <p>11 A. Yes.</p> <p>12 Q. Okay. You met with lawyers</p> <p>13 here at the office we're sitting in; is</p> <p>14 that correct?</p> <p>15 A. Yes.</p> <p>16 Q. And you met on -- did you</p> <p>17 meet on Tuesday or did you arrive late</p> <p>18 Tuesday?</p> <p>19 A. Briefly Tuesday.</p> <p>20 Q. And then you met on</p> <p>21 Wednesday as well, spent all day here?</p> <p>22 MS. MILLER: Objection.</p> <p>23 BY MR. DeROCHE:</p> <p>24 Q. You can answer.</p>	<p>1 Q. Did you talk to any folks</p> <p>2 from CVS who you used to work with, about</p> <p>3 this deposition?</p> <p>4 A. No.</p> <p>5 Q. Other than the lawyers, have</p> <p>6 you spoken to anybody else?</p> <p>7 A. My wife knows I'm here.</p> <p>8 Q. Other than her, no one else?</p> <p>9 A. My son and daughter know I'm</p> <p>10 here.</p> <p>11 Q. Other than family, no</p> <p>12 other -- no other individuals?</p> <p>13 A. That's about it.</p> <p>14 Q. Okay. So you didn't try to</p> <p>15 reach out to folks you used to work with,</p> <p>16 like Ms. Hinkle or --</p> <p>17 A. No.</p> <p>18 Q. -- anybody else?</p> <p>19 A. No.</p> <p>20 Q. Judy Hughes?</p> <p>21 A. No. No.</p> <p>22 Q. Do you stay in contact with</p> <p>23 any people from CVS that you used to work</p> <p>24 with?</p>
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<p>1 A. Most of the day.</p> <p>2 Q. Okay. You looked at</p> <p>3 documents?</p> <p>4 A. Some documents, yes.</p> <p>5 Q. Okay. You have an</p> <p>6 understanding of what this case is about,</p> <p>7 correct?</p> <p>8 MS. MILLER: Objection.</p> <p>9 THE WITNESS: Not -- not in</p> <p>10 any great detail. I mean high</p> <p>11 level. High level, but there's a</p> <p>12 lot more I don't know than I do</p> <p>13 know.</p> <p>14 BY MR. DeROCHE:</p> <p>15 Q. Sure. I think that applies</p> <p>16 to most of us.</p> <p>17 When did you find out that</p> <p>18 you were being deposed in connection with</p> <p>19 this case?</p> <p>20 A. Early December maybe.</p> <p>21 Q. Okay. So you've known for</p> <p>22 approximately a month that your</p> <p>23 deposition was going to be taken?</p> <p>24 A. About that, yeah.</p>	<p>1 A. Very few, but just an</p> <p>2 occasional hello. But not -- like I</p> <p>3 really haven't seen people that I worked</p> <p>4 with from CVS or -- so...</p> <p>5 Q. Did you leave on good terms</p> <p>6 in your view?</p> <p>7 MS. MILLER: Objection.</p> <p>8 THE WITNESS: I mean I left</p> <p>9 on my own.</p> <p>10 BY MR. DeROCHE:</p> <p>11 Q. You don't have any animosity</p> <p>12 towards CVS?</p> <p>13 MS. MILLER: Objection.</p> <p>14 THE WITNESS: No. It was an</p> <p>15 opportunity to be involved in a</p> <p>16 lot of, you know, a lot of</p> <p>17 responsibility and a lot of</p> <p>18 project management work. And I</p> <p>19 think professionally it was a good</p> <p>20 opportunity, and at the time a</p> <p>21 better opportunity developed.</p> <p>22 BY MR. DeROCHE:</p> <p>23 Q. Sure. Do you have clients</p> <p>24 in Washington DC that you came to see or</p>

<p style="text-align: right;">Page 390</p> <p>1 did you just come for this deposition?      2 A. I came for the deposition.      3 Q. So since Tuesday, you      4 focused on this deposition that we're      5 having here today?      6 A. I've gone and -- getting      7 back to the hotel room, I've done some      8 work for other clients.      9 Q. Okay. All right. I want to      10 try to understand where logistics loss      11 prevention fit in the -- in the hierarchy      12 of CVS. I don't think I understand that      13 at all.      14 So can you explain logistics      15 loss prevention and where it fit in, in      16 terms of -- of the structure at CVS?      17 A. Sure. I was -- so I was a      18 part of the overall loss prevention      19 department. And there is a field loss      20 prevention department which would focus      21 on stores. There was logistics loss      22 prevention which focused, supported      23 distribution centers. There is also some      24 corporate support around loss prevention</p>	<p style="text-align: right;">Page 392</p> <p>1 I always had the distribution centers as      2 a main part of what I was doing.      3 Q. And when you took over as      4 director of logistics loss prevention,      5 were you sort of the top dog in the      6 logistics loss prevention department?      7 A. I managed the department,      8 so...      9 Q. And that was at least since      10 2005 you had held that position?      11 A. Yeah, again as I testified      12 earlier, I mean there's typical --      13 typical corporate America. I mean --      14 Q. Sure.      15 A. -- you can have same title      16 but different levels.      17 Q. Great.      18 A. So, you know, I was a      19 director level different in 2005 than say      20 a director level I was in, say, 2003.      21 But it was just a -- you know, it was      22 kind of an evolution as the company      23 continued to grow and even some of my      24 responsibilities grew.</p>
<p style="text-align: right;">Page 391</p> <p>1 also. And I believe there also was some      2 loss prevention support for some of the      3 Caremark mail order sites when I was      4 present.      5 Q. Okay. And so logistics loss      6 prevention focused primarily on the      7 distribution centers?      8 A. That was -- that was a --      9 you know, a big component. I also      10 provided some support to some of the      11 Caremark mail order sites from a safety      12 standpoint.      13 Q. That was under loss --      14 logistics loss prevention as well?      15 A. It was.      16 Q. Other than the safety      17 that -- oversight that you may have      18 provided to the Caremark mail order      19 division, otherwise besides that, you did      20 focus on the distribution centers?      21 A. That was my primary focus.      22 I mean I had a variety of      23 responsibilities during my career.      24 Some -- some retail, some corporate. But</p>	<p style="text-align: right;">Page 393</p> <p>1 Q. So the director level that      2 you attained in 2005 was, was that the      3 highest level -- director level --      4 A. No.      5 Q. -- in logistics loss      6 prevention?      7 MS. MILLER: Give him a      8 chance to finish his question,      9 please.      10 THE WITNESS: Oh, sorry.      11 BY MR. DeROCHE:      12 Q. Highest level in logistics      13 loss prevention.      14 A. There are -- you know, I      15 guess I was the director of logistics,      16 loss prevention. As far as my position      17 goes on the director level, I was      18 probably in the middle of the levels of      19 directors, like there could have -- you      20 know, there could have been another --      21 there could have been -- like I could      22 have attained another higher level of      23 director and still be in logistics, loss      24 prevention.</p>

<p style="text-align: right;">Page 394</p> <p>1        But there wasn't -- you      2 know, I certainly reported in to someone      3 else. But that individual had, you know,      4 other responsibilities.</p> <p>5        Q. You reported to Judy Hughes,      6 I think you said; is that correct?</p> <p>7        A. Yes.</p> <p>8        Q. And was Ms. Hughes also      9 considered a director of logistics loss      10 prevention or did she have some other      11 title?</p> <p>12       A. I believe she was just      13 director of loss prevention.</p> <p>14       Q. Okay. She was -- so      15 logistics loss prevention is a department      16 within loss prevention?</p> <p>17       A. It is. It is.</p> <p>18       Q. She was at the loss      19 prevention level, as opposed to the      20 logistics loss prevention level?</p> <p>21       MS. MILLER: Frank, just      22 give him a chance --</p> <p>23       MR. DeROCHE: Yeah, sure.</p> <p>24       MS. MILLER: -- so you're</p>	<p style="text-align: right;">Page 396</p> <p>1 BY MR. DeROCHE:      2       Q. You wouldn't disagree with      3 that? You were -- you were the top guy      4 in logistics loss prevention at that      5 point?</p> <p>6       MS. MILLER: Objection.</p> <p>7       THE WITNESS: As a -- you      8 know, as a part of, keeping in      9 mind I was still in the overall      10 loss prevention department.</p> <p>11 BY MR. DeROCHE:</p> <p>12       Q. Sure. I understand.</p> <p>13 Everyone needs got a boss.</p> <p>14       A. Right. And even -- you      15 know, and --</p> <p>16       Q. At least at home, but be      17 that as it may.</p> <p>18       A. Even, like, my business card      19 would say director of logistics loss      20 prevention. You know, from a -- I guess      21 a budgetary payroll standpoint, it may      22 just say director loss prevention.      23 Director 1 or Director 2. CVS was big --      24 changed, you know, grading systems and</p>
<p style="text-align: right;">Page 395</p> <p>1        not stepping on him.</p> <p>2 BY MR. DeROCHE:      3       Q. Trying to get a distinction      4 so I understand. So in terms of      5 directors of logistics, loss prevention,      6 you were -- you were the top person of      7 logistics, loss prevention as of 2005?</p> <p>8       MS. MILLER: Objection.</p> <p>9 BY MR. DeROCHE:      10       Q. Is that correct?</p> <p>11       A. My title was director of      12 logistics, loss prevention.</p> <p>13       Q. You saw the SOP earlier that      14 mentioned that you were the one, the only      15 one, at least according to the SOP, that      16 was going to be reporting to the DEA any      17 suspicious orders identified and that      18 referred to you as the director of      19 logistics loss prevention. Seems to      20 indicate -- seems to indicate that you      21 are the top dog in logistics loss      22 prevention as of at least when that SOP      23 was prepared in 2011.</p> <p>24       MS. MILLER: Objection.</p>	<p style="text-align: right;">Page 397</p> <p>1 whatnot so.</p> <p>2       Q. I understand it was a      3 multi-billion dollar company at the time      4 that you were there. Probably even      5 bigger now.</p> <p>6       MS. MILLER: Objection.</p> <p>7 BY MR. DeROCHE:      8       Q. So there was many levels of      9 corporate structure, I would assume, that      10 you had to answer through?</p> <p>11       MS. MILLER: Objection.</p> <p>12       THE WITNESS: Can you repeat      13 that?</p> <p>14 BY MR. DeROCHE:      15       Q. Did you have -- let's put it      16 this way. Logistics, loss prevention,      17 did you have a budget?</p> <p>18       A. Yes.</p> <p>19       Q. And you were ultimately      20 responsible for budget issues, I take it,      21 as the director?</p> <p>22       A. For my piece of the pie.</p> <p>23       Q. Right.</p> <p>24       A. The overall loss prevention</p>

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<p>1 budget, I was tasked with managing that.</p> <p>2 Q. Okay. You knew that at</p> <p>3 least with respect to the Rx distribution</p> <p>4 centers, that they had a license that was</p> <p>5 issued by the Drug Enforcement Agency,</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. And were you responsible as</p> <p>9 director of logistics, loss prevention in</p> <p>10 ensuring that those licenses were</p> <p>11 maintained?</p> <p>12 MS. MILLER: Objection.</p> <p>13 THE WITNESS: I'm not sure</p> <p>14 quite what you mean by maintained.</p> <p>15 BY MR. DeROCHE:</p> <p>16 Q. Excuse me?</p> <p>17 A. I'm not quite sure what you</p> <p>18 mean by maintained.</p> <p>19 Q. That each of the -- each of</p> <p>20 the Rx distribution centers continued to</p> <p>21 be licensed by the Drug Enforcement</p> <p>22 Agency to distribute controlled</p> <p>23 substances.</p> <p>24 MS. MILLER: Objection.</p>	<p>1 suspicious orders?</p> <p>2 MS. MILLER: Objection.</p> <p>3 BY MR. DeROCHE:</p> <p>4 Q. You're aware of that, right?</p> <p>5 MS. MILLER: Objection.</p> <p>6 THE WITNESS: As per the --</p> <p>7 yes.</p> <p>8 BY MR. DeROCHE:</p> <p>9 Q. Okay. And you understood</p> <p>10 that there was, in fact, a division</p> <p>11 within the DEA that was called the</p> <p>12 department of diversion that focused on</p> <p>13 the diversion of controlled drugs from</p> <p>14 the legal use of those drugs. You're</p> <p>15 aware that there's a diversion</p> <p>16 department?</p> <p>17 A. I wouldn't necessarily use</p> <p>18 that term. I mean, just -- to me, the</p> <p>19 DEA was the DEA.</p> <p>20 Q. Well, they sent diversion</p> <p>21 investigators at times to inspect --</p> <p>22 A. Right, right.</p> <p>23 Q. Right. So you know --</p> <p>24 A. But we just -- we always</p>
<p style="text-align: center;">Page 399</p> <p>1 THE WITNESS: There was a --</p> <p>2 you know, people responsible for</p> <p>3 licensing and registration within</p> <p>4 company.</p> <p>5 BY MR. DeROCHE:</p> <p>6 Q. Okay. So logistics loss</p> <p>7 prevention didn't handle that?</p> <p>8 A. No. Like if you, like to</p> <p>9 renew a DEA license, I wouldn't be</p> <p>10 involved in that.</p> <p>11 Q. Okay. What about complying</p> <p>12 with the conditions upon which that</p> <p>13 license is issued?</p> <p>14 MS. MILLER: Objection.</p> <p>15 THE WITNESS: It could be</p> <p>16 maybe certain components, but</p> <p>17 not -- not full responsibility for</p> <p>18 all of it.</p> <p>19 BY MR. DeROCHE:</p> <p>20 Q. Okay. The component -- one</p> <p>21 of the components -- one of the</p> <p>22 conditions, I like to call it, to the</p> <p>23 license is that the distribution centers</p> <p>24 design and maintain a system to identify</p>	<p style="text-align: center;">Page 401</p> <p>1 just said the DEA is here.</p> <p>2 Q. DEA is showing up, knocking</p> <p>3 on the door?</p> <p>4 A. Right. We didn't I guess</p> <p>5 formally get into the exact title. It</p> <p>6 was just, the DEA is here.</p> <p>7 Q. And you understood that the</p> <p>8 concern of DEA was that controlled</p> <p>9 substances like hydrocodone combination</p> <p>10 products not be diverted into street</p> <p>11 drugs, for lack of a better term, right?</p> <p>12 MS. MILLER: Objection.</p> <p>13 BY MR. DeROCHE:</p> <p>14 Q. You understood that, right?</p> <p>15 MS. MILLER: Objection.</p> <p>16 THE WITNESS: I mean, I</p> <p>17 looked at my role to ensure the</p> <p>18 safety and security of control</p> <p>19 drugs, you know, upon receipt into</p> <p>20 the distribution center, and then</p> <p>21 to upon delivery to the CVS retail</p> <p>22 store.</p> <p>23 BY MR. DeROCHE:</p> <p>24 Q. Except the retails -- well,</p>

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<p>1 part of the responsibility as you've been      2 talking about all day today, for a      3 distribution center, was to ensure that      4 orders were legitimate orders that      5 weren't going to lead to diversion.      6 You're aware of that?</p> <p>7 MS. MILLER: Objection.</p> <p>8 THE WITNESS: Again, I think      9 I spoke earlier. I was protecting      10 the integrity, you know, from a      11 security, safety standpoint and to      12 ensure that they are, you know,      13 falling into the proper hands.</p> <p>14 BY MR. DeROCHE:</p> <p>15 Q. Correct. Because if they      16 fall into the -- not the proper hands,      17 again you have things like an epidemic of      18 opioid use of prescription drugs.</p> <p>19 MS. MILLER: Objection.</p> <p>20 BY MR. DeROCHE:</p> <p>21 Q. And obviously you don't want      22 that, right?</p> <p>23 MS. MILLER: Objection.</p> <p>24 THE WITNESS: No. I mean,</p>	<p>1 THE WITNESS: I guess part      2 of it would be a case-by-case      3 basis. You would have to look at      4 how was it paid for. Was it, you      5 know, a legitimate prescription.      6 I mean, there's a lot -- a lot      7 goes into it. I've always, you      8 know shied away from just blanket      9 statements.</p> <p>10 BY MR. DeROCHE:</p> <p>11 Q. Sure.</p> <p>12 A. I mean, just -- each      13 situation, it's separate and, you know,      14 you have to evaluate the facts.</p> <p>15 Q. Sure. There could be      16 varying ways through which drugs are      17 diverted besides theft. You just      18 mentioned one, illegitimate prescription.      19 Even if it's brought in, filled, and the      20 full price is paid to CVS, that could be      21 an instance of diversion, just like if      22 someone stole it off the shelf. You      23 agree with that, right?</p> <p>24 MS. MILLER: Objection.</p>
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<p>1 my -- my focus really was, you      2 know, during my time there, I      3 mean, it was, you know, preventing      4 theft. I mean, that was, you      5 know -- as far as other terms or      6 whatnot, it was just, you know, we      7 discussed, you know, how to ensure      8 the safety and security of the      9 control drugs.</p> <p>10 BY MR. DeROCHE:</p> <p>11 Q. I understand that, you know,      12 theft can be one component by which drugs      13 are diverted. But you recognize, don't      14 you, and didn't you recognize at the      15 time, that diversion could occur through      16 other means besides theft?</p> <p>17 MS. MILLER: Objection.</p> <p>18 Asked and answered.</p> <p>19 THE WITNESS: Ultimately,      20 it's theft.</p> <p>21 BY MR. DeROCHE:</p> <p>22 Q. Even if the drugs are paid      23 for to CVS?</p> <p>24 MS. MILLER: Objection.</p>	<p>1 THE WITNESS: Again, I come      2 back to, you know, having -- I'm      3 responsible to protect the      4 controls and the safety and      5 security and make sure they fall      6 into the proper hands. I mean,      7 that's -- that's the ultimate      8 goal.</p> <p>9 BY MR. DeROCHE:</p> <p>10 Q. Right. And that was one of      11 the conditions to the distribution      12 centers getting their license from the      13 DEA to distribute these drugs, is that      14 CVS played by the rules and did its part      15 to police and prevent diversion of those      16 drugs?</p> <p>17 MS. MILLER: Objection.</p> <p>18 BY MR. DeROCHE:</p> <p>19 Q. You would agree, right?</p> <p>20 A. You know, I -- you know, I      21 guess when I was involved I was, you      22 know, certainly to ensure we were meeting      23 the requirements of the DEA regulations.</p> <p>24 I mean that's -- that's what, you know,</p>

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<p>1 my focus was always on.</p> <p>2 Q. Okay. In 2006, when you</p> <p>3 were the director of logistics loss</p> <p>4 prevention at CVS, what steps were being</p> <p>5 taken by CVS to prevent the diversion of</p> <p>6 controlled substances, if you can recall?</p> <p>7 A. From what I can recall, I</p> <p>8 know there was certainly instructions to</p> <p>9 the employees that were fulfilling any</p> <p>10 control drug order, any, you know, who</p> <p>11 felt as -- you know, any excessive</p> <p>12 quantity, in which I can't recall an</p> <p>13 actual number that would be. But any,</p> <p>14 you know, what, you know, the employees,</p> <p>15 after a while you get used to, you know,</p> <p>16 filling orders. So they would, you know,</p> <p>17 start to get a feel for, you know, this</p> <p>18 is a -- this seems to be an average</p> <p>19 order. Or if they felt that it was an</p> <p>20 above average order, then they were</p> <p>21 instructed to notify their supervisor who</p> <p>22 could be a pharmacy supervisor or</p> <p>23 pharmacy manager.</p> <p>24 And then from there, you</p>	<p>1 Q. How -- how were they</p> <p>2 expected to make those reports?</p> <p>3 A. They would verbally</p> <p>4 communicate to their supervisor.</p> <p>5 Q. What training did they</p> <p>6 receive in terms of identifying</p> <p>7 suspicious orders?</p> <p>8 A. That's something I was not</p> <p>9 involved in.</p> <p>10 Q. Was that part of logistics</p> <p>11 loss prevention department to provide</p> <p>12 that training?</p> <p>13 A. It probably would be more of</p> <p>14 an operational component.</p> <p>15 Q. So who was supposed to</p> <p>16 provide that training?</p> <p>17 A. I believe it would be up to</p> <p>18 the pharmacy supervisor or pharmacy</p> <p>19 manager.</p> <p>20 Q. Was there any written</p> <p>21 training material at that time?</p> <p>22 A. I don't recall.</p> <p>23 Q. Was there any written</p> <p>24 procedure instructing the pickers and</p>
<p>1 know, to, you know, research, you know,</p> <p>2 why, you know, why is this order, you</p> <p>3 know, excessive.</p> <p>4 Also, I know the -- the</p> <p>5 field had -- and I think I testified</p> <p>6 earlier, I don't recall all the details</p> <p>7 around the Prescription Drug Monitoring</p> <p>8 Report. That would also play into the --</p> <p>9 you know, what I would consider overall</p> <p>10 prevention or integrity of orders.</p> <p>11 Q. Anything else?</p> <p>12 A. That -- you know, I'm sure</p> <p>13 there were probably other measures in</p> <p>14 place, but that's really what I recall at</p> <p>15 this time.</p> <p>16 Q. With respect to the folks in</p> <p>17 the DC that were picking and filling the</p> <p>18 orders from the control cage, is that</p> <p>19 what you're talking about when you say</p> <p>20 these personnel --</p> <p>21 A. Yes.</p> <p>22 Q. -- were expected to report?</p> <p>23 Yes?</p> <p>24 A. Yes. The employees.</p>	<p>1 packers how to identify suspicious</p> <p>2 orders?</p> <p>3 A. I can't recall.</p> <p>4 Q. Did they -- did the pickers</p> <p>5 and packers have access to dispensing</p> <p>6 data for the pharmacies that they were</p> <p>7 picking the orders for?</p> <p>8 A. The dispensing data.</p> <p>9 Q. Correct.</p> <p>10 A. Can you -- can you explain</p> <p>11 that?</p> <p>12 Q. Dispensing data, you don't</p> <p>13 know what dispensing data means?</p> <p>14 A. I'm just -- how are you</p> <p>15 using it?</p> <p>16 Q. What's that?</p> <p>17 A. How are you using it?</p> <p>18 Q. I'm using it in the sense</p> <p>19 that CVS has dispensing data, meaning</p> <p>20 data showing how a pharmacy has dispensed</p> <p>21 the drugs that it's selling to its</p> <p>22 customers in terms of who they are, where</p> <p>23 they came from --</p> <p>24 A. Yeah.</p>
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<p>1 Q. -- what they purchased, how      2 often they purchased it, and so forth.      3 That, that kind of data, pharmacy level      4 data.</p> <p>5 MS. MILLER: Give him a      6 chance --</p> <p>7 BY MR. DeROCHE:</p> <p>8 Q. Do you have access to that?      9 MS. MILLER: -- to finish      10 his question.</p> <p>11 Objection.</p> <p>12 THE WITNESS: I'm not aware      13 of a report, per se. But I -- I      14 do know the employees that worked      15 in the control drug cage.</p> <p>16 They were, some of them, you      17 know, better seasoned employees.      18 And they would -- you know,      19 they -- they would get a feel.      20 You know, they would get a feel      21 for, you know, some average --      22 kind of what average history and      23 what would seem outside the      24 average.</p>	<p>1 know, it wasn't -- I'm not saying it was      2 a report, per se. They would just --      3 they would -- they would get a feel. I      4 mean they were seasoned -- seasoned,      5 well-trained employees. And it's a -- I      6 know in the distribution center, you      7 know, it was -- you know, that was viewed      8 as a desirable position. You know, it      9 was, you know, good quality employees      10 that were involved in that.</p> <p>11 Q. They are -- they are picking      12 control drugs in the control cage; is      13 that correct?</p> <p>14 A. In most instances, yes.</p> <p>15 Q. There are not picking      16 noncontrolled drugs?</p> <p>17 A. They could be times, but the      18 control drugs would be picked separately.</p> <p>19 Q. Okay. So generally they are      20 not going to know what the volume of      21 noncontrolled drugs were being shipped to      22 a particular store, to compare that to      23 the control drugs for the most part?</p> <p>24 A. I mean, again, it would</p>
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<p>1 I mean, they would -- they      2 would -- over a period of time      3 they would get a feel for that.</p> <p>4 BY MR. DeROCHE:</p> <p>5 Q. The average meaning, what do      6 you mean by average?</p> <p>7 A. As far as what a typical      8 store would order from a control drug      9 standpoint.</p> <p>10 Q. So you're saying they'd get      11 a feel for what -- say they have a      12 hundred stores that they are picking      13 control drugs for.</p> <p>14 A. Right.</p> <p>15 Q. What the average would be?</p> <p>16 MS. MILLER: Give him a      17 chance -- just for the      18 transcript -- to finish his      19 question before you speak.</p> <p>20 BY MR. DeROCHE:</p> <p>21 Q. You can answer.</p> <p>22 A. It's just they would -- you      23 know, again, they -- they would get a      24 feel for what stores were ordering. You</p>	<p>1 depend on the size of the facility. You      2 know, the volume being produced. You      3 know, you -- I don't think it's      4 necessarily that, A, an employee in the      5 control drug cage was there all day. And      6 I -- you know, I'd have to defer to      7 operational people to comment more      8 intelligently on this than me.</p> <p>9 But, you know, you know,      10 from my observations and what I can      11 recall from years ago, that you could      12 have someone that's assigned to the      13 control drug cage and, you know, they      14 could be in there for one hour and then      15 the rest of the day could be picking in      16 the noncontrol drug area.</p> <p>17 Q. When a CVS DC receives its      18 license from the DEA to distribute      19 Schedule III drugs, the requirement was      20 that it design and operate a system to      21 expose suspicious orders and to identify      22 suspicious orders and to act on them.</p> <p>23 MS. MILLER: Objection.</p> <p>24 BY MR. DeROCHE:</p>

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<p>1 Q. So I guess what I'm saying      2 is, do you know what the word "design"      3 means?</p> <p>4 MS. MILLER: Objection.</p> <p>5 THE WITNESS: Design, I mean      6 I would look at having processes      7 in place.</p> <p>8 BY MR. DeROCHE:</p> <p>9 Q. So someone has to      10 consciously, in other words, make a      11 decision, we're going to -- we're going      12 to -- we're going to design this system      13 with the goal in mind of identifying      14 suspicious orders?</p> <p>15 MS. MILLER: Objection.</p> <p>16 BY MR. DeROCHE:</p> <p>17 Q. And that's been a      18 requirement since 1972?</p> <p>19 MS. MILLER: Objection.</p> <p>20 BY MR. DeROCHE:</p> <p>21 Q. So do you know who designed      22 the system you just mentioned of having      23 the pickers and packers develop some sort      24 of idea over time of what an average</p>	<p>1 on what you're trying to assess.      2 A. Right. Like professionally      3 I've learned quality control of, you      4 know, one company is different than      5 quality control at another company.      6 Q. But in general, it's a      7 method by which you test to see if a      8 system that you put in place is actually      9 doing what it is intended, you'd agree      10 with that, a fair assessment of what      11 quality control might mean?</p> <p>12 MS. MILLER: Objection.</p> <p>13 THE WITNESS: Can you repeat      14 that?</p> <p>15 BY MR. DeROCHE:</p> <p>16 Q. Yeah. Quality control means      17 you're looking at a system you've put in      18 place and you're trying to assess whether      19 or not it's fulfilling its -- what you've      20 intended the system to do.</p> <p>21 MS. MILLER: Objection.</p> <p>22 THE WITNESS: You can also,      23 to have quality control, just      24 built into normal operational</p>
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<p>1 order might look like to compare to the      2 orders they are filling?</p> <p>3 MS. MILLER: Objection.</p> <p>4 BY MR. DeROCHE:</p> <p>5 Q. Who designed that system, do      6 you know?</p> <p>7 MS. MILLER: Objection.</p> <p>8 THE WITNESS: I wouldn't      9 know.</p> <p>10 BY MR. DeROCHE:</p> <p>11 Q. Do you know if anybody      12 designed that system?</p> <p>13 MS. MILLER: Objection.</p> <p>14 THE WITNESS: I wouldn't      15 know.</p> <p>16 BY MR. DeROCHE:</p> <p>17 Q. Do you understand what      18 quality control means?</p> <p>19 MS. MILLER: Objection.</p> <p>20 THE WITNESS: Yes, in some      21 context.</p> <p>22 BY MR. DeROCHE:</p> <p>23 Q. Yeah, I understand. It can      24 mean a lot of different things depending</p>	<p>1 practices.</p> <p>2 BY MR. DeROCHE:</p> <p>3 Q. Sure. Do you know if there      4 was any quality control system that was      5 built into the pickers and packers trying      6 to figure out what's suspicious and      7 what's not system?</p> <p>8 MS. MILLER: Objection.</p> <p>9 THE WITNESS: I know from a      10 quality control standpoint, when      11 they came to --</p> <p>12 BY MR. DeROCHE:</p> <p>13 Q. I'm sorry. What's that?</p> <p>14 I -- I missed that. I apologize.</p> <p>15 A. I was giving you time to      16 read.</p> <p>17 Q. Go ahead.</p> <p>18 A. From a quality control      19 standpoint, and I know there were      20 processes in place to double-check the      21 controls being picked to make sure that      22 they were accurate.</p> <p>23 Q. Sure. Picking accuracy I      24 understand, but --</p>

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<p>1        A. So -- but -- so if you      2 had --      3        Q. They were scored, right, for      4 accuracy in terms of picking and I      5 understand all that. But I'm not talking      6 about that.      7        I'm talking about whether or      8 not you did any quality control at all to      9 decide -- to determine whether or not      10 leaving it up to the pickers and packers      11 to somehow identify suspicious orders      12 actually was an efficient and appropriate      13 system to actually try to identify      14 suspicious orders.</p>	<p>1 second person saying, "Well, there seems      2 to be a lot of hydrocodone in this tote,      3 maybe we should look at it," do you know      4 if -- first of all, do you know of any      5 instance when that actually happened,      6 that you can recall? Specific instance,      7 I mean.</p>
<p>15       MS. MILLER: Objection.      16 BY MR. DeROCHE:      17       Q. Was there any quality      18 control on that score?</p>	<p>8                    MS. MILLER: Objection.      9                    THE WITNESS: That's -- I      10 wouldn't -- I wouldn't be involved      11 in that.</p>
<p>19        MS. MILLER: Objection.      20        THE WITNESS: You know,      21 again, you know, as I mentioned      22 earlier, there were various      23 components that I say could tie      24 into suspicious order monitoring,</p>	<p>12 BY MR. DeROCHE:      13        Q. Okay. And in terms of the      14 use of the PDMR, was there any kind of      15 written policy that incorporated the PDMR      16 into any kind of system to identify      17 suspicious orders?      18        A. I don't recall the PDMR      19 procedures. It's not a system that I      20 used or I was familiar with, so I --      21        Q. Your answer is no?      22        A. I really couldn't answer      23 that.      24        Q. Okay. Are you aware of any</p>
<p>1        you know, not only the      2 pickers-packers, but reports on      3 the field level.      4        But I would -- I would say      5 as far as the double-checks that      6 go around the picking of controls      7 and if you had one employee that      8 had an excessive amount of a      9 control item, and yet that's      10 being -- that order is being      11 double-checked by another      12 employee, that could be another      13 opportunity to -- to flag, hey,      14 wait a minute, you know, maybe we      15 better get our supervisor involved      16 before we let this go.</p>	<p>1        suspicious orders that were reported to      2 the DEA during the entire time that you      3 were at CVS --      4        MS. MILLER: Objection.      5                    Asked --      6 BY MR. DeROCHE:      7        Q. -- that emanated from the      8 pickers and packers process that you      9 mentioned?      10        A. Not that I can recall.      11        Q. Do you recall any instance      12 when a picker and packer flagged an order      13 that was anything other than an excessive      14 amount? In other words, an unusual      15 amount.      16        A. Again, I wouldn't have      17 exposure to that in the position that I      18 was in.      19        Q. You were aware that, at      20 least from the DEA standpoint, looking      21 solely at large amount, large volume      22 alone wasn't good enough in terms of      23 complying with the regulations requiring      24 a system in place to identify suspicious</p>
<p>17 BY MR. DeROCHE:      18       Q. I understand that. That's      19 picking accuracy again.      20       A. Yes.      21       Q. I understand that someone      22 checks that to make sure that what's      23 ordered is what's in the tote. And I'm      24 asking you -- and again, even with that</p>	<p>Page 419</p>

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<p>1 orders. You're aware of that?</p> <p>2 MS. MILLER: Objection.</p> <p>3 THE WITNESS: There were --</p> <p>4 from, again, a high level, I know</p> <p>5 there were multiple components</p> <p>6 that went into what could be a</p> <p>7 potentially suspicious situation.</p> <p>8 BY MR. DeROCHE:</p> <p>9 Q. Unusual size is only one of</p> <p>10 those?</p> <p>11 A. That could be one.</p> <p>12 Q. Unusual frequency, correct?</p> <p>13 A. Sounds accurate.</p> <p>14 Q. Unusual pattern, you know,</p> <p>15 an order that deviates from normal</p> <p>16 pattern?</p> <p>17 A. That could be a component.</p> <p>18 Q. In 2008, the Buzzeo firm</p> <p>19 delivered an algorithm to CVS that was</p> <p>20 intended to be incorporated into the</p> <p>21 ordering system to identify suspicious</p> <p>22 orders, right?</p> <p>23 A. I believe around that time</p> <p>24 frame.</p>	<p>1 A. Yeah. Again, not -- not</p> <p>2 aware of dates. And I think as I've</p> <p>3 mentioned before I think --</p> <p>4 Q. Sure?</p> <p>5 A. -- there was an evolution of</p> <p>6 the process.</p> <p>7 Q. Right. And the evolution</p> <p>8 was --</p> <p>9 A. Changes made.</p> <p>10 Q. Right. It was changed at</p> <p>11 the time it was retuned. We looked at</p> <p>12 the retunement document a little bit</p> <p>13 earlier. It was moving from NDC or item,</p> <p>14 looking then at active ingredient, and</p> <p>15 moving from six months to 12 months?</p> <p>16 MS. MILLER: Objection.</p> <p>17 BY MR. DeROCHE:</p> <p>18 Q. Those were the two major</p> <p>19 changes when the retunement occurred,</p> <p>20 right?</p> <p>21 MS. MILLER: Objection.</p> <p>22 THE WITNESS: I mean, there</p> <p>23 were changes. I mean, those are a</p> <p>24 couple of changes I can, you know,</p>
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<p>1 Q. And --</p> <p>2 MS. MILLER: Objection.</p> <p>3 Sorry for the late objection.</p> <p>4 BY MR. DeROCHE:</p> <p>5 Q. That suspicious order</p> <p>6 monitoring algorithm that was delivered</p> <p>7 looked at essentially a six-month history</p> <p>8 of what the store had ordered, did a</p> <p>9 bunch of calculations, spit out a score,</p> <p>10 that scored the order in terms of the</p> <p>11 likelihood that it was suspicious. Is</p> <p>12 that a fair summary of what that was</p> <p>13 intended to do?</p> <p>14 MS. MILLER: Objection.</p> <p>15 THE WITNESS: I think it was</p> <p>16 a part. But I'm not 100 percent</p> <p>17 sure as far as the six-month</p> <p>18 period goes.</p> <p>19 BY MR. DeROCHE:</p> <p>20 Q. Well, you understood that</p> <p>21 the initial -- the original algorithm</p> <p>22 that came looked at six months. Then it</p> <p>23 was retuned. It moved to a 12-month</p> <p>24 history. Are you aware of that?</p>	<p>1 recall. I can't recall the exact</p> <p>2 time frame. But that's safe to</p> <p>3 say.</p> <p>4 BY MR. DeROCHE:</p> <p>5 Q. Safe to say. Okay. So if</p> <p>6 we look at an IRR. And I know from</p> <p>7 looking at the e-mail that we saw earlier</p> <p>8 at one point when the IRR was turned off</p> <p>9 for the rest of the country, two folks</p> <p>10 continued to get the IRR, Mr. Mortelliti</p> <p>11 and yourself. So I assume at that time,</p> <p>12 you at least were receiving the IRR and</p> <p>13 were familiar generally with the format.</p> <p>14 MS. MILLER: Objection.</p> <p>15 BY MR. DeROCHE:</p> <p>16 Q. Correct?</p> <p>17 MS. MILLER: Objection.</p> <p>18 THE WITNESS: I may have</p> <p>19 been receiving it, but I was -- I</p> <p>20 was not involved in the day-to-day</p> <p>21 review of the report.</p> <p>22 BY MR. DeROCHE:</p> <p>23 Q. We have some giant size</p> <p>24 documents here. Don't blame me.</p>

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<p>1           (Document marked for      2 identification as Exhibit      3 CVS-Devlin-P-201.)</p> <p>4           MR. DeROCHE: Counsel is      5 going to get hers in a minute.      6 It's poster size.</p> <p>7           MS. MILLER: What's the      8 exhibit number?</p> <p>9           MR. DeROCHE: 201.</p> <p>10          MS. MILLER: 201?</p> <p>11          MR. DeROCHE: Correct.</p> <p>12 BY MR. DeROCHE:</p> <p>13          Q. We've handed you what we've      14 now marked as Exhibit 201.</p> <p>15          And this bears a CVS      16 production number of 100763. It appears      17 to be an IRR for 12/14/2010; is that      18 correct?</p> <p>19          A. That's what's stated here,      20 yes.</p> <p>21          Q. And it appears to be      22 directed to the Indianapolis distribution      23 center, correct?</p> <p>24          A. That's what it states, yes.</p>	<p>1           THE WITNESS: I do not have      2 the report numbers memorized, so I      3 can only take it for what the      4 document states.</p> <p>5 BY MR. DeROCHE:</p> <p>6          Q. Okay. Let's go to the third      7 page now that's a table on the third page      8 of Exhibit 201, page that bears 10765 as      9 the Bates number.</p> <p>10          MS. MILLER: I think it's      11 100765.</p> <p>12          MR. DeROCHE: 100765,      13 correct, yeah.</p> <p>14 BY MR. DeROCHE:</p> <p>15          Q. Do you know how to interpret      16 this table?</p> <p>17          A. I wouldn't.</p> <p>18          Q. Do you know what Mr. Dugger      19 was supposed to do with this report when      20 he received it?</p> <p>21          MS. MILLER: Objection.</p> <p>22          THE WITNESS: I'm not sure,      23 you know, as far as what time      24 frame this was.</p>
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<p>1          Q. Okay. Are you familiar with      2 a gentleman named Terrence Dugger?</p> <p>3          A. Yes.</p> <p>4          Q. Okay. And what was      5 Mr. Dugger?</p> <p>6          A. He was a loss prevention      7 manager.</p> <p>8          Q. At the Indianapolis DC?</p> <p>9          A. At the time, yes.</p> <p>10         Q. Okay. Now, if you look      11 at -- first of all, what's the report ID      12 number?</p> <p>13         MS. MILLER: Objection.</p> <p>14 BY MR. DeROCHE:</p> <p>15         Q. Do you see that, on the      16 second page, 100764? Report ID.</p> <p>17         A. What number?</p> <p>18         Q. The report ID number.</p> <p>19         Report ID designation. It's not just      20 numbers.</p> <p>21         A. BIP006A. Okay.</p> <p>22         Q. Are you familiar with the      23 report that bears that designation?</p> <p>24         MS. MILLER: Objection.</p>	<p>1          BY MR. DeROCHE:</p> <p>2          Q. Well, the date is on it,      3 12/14/2010.</p> <p>4          A. Right. Well, I'm not sure      5 as far as time frame and who, like who      6 was reviewing, who was not reviewing the      7 report.</p> <p>8          Q. Well, if you remember      9 correctly the documents you looked at      10 earlier, I don't want to go back over      11 them, trust me. But I believe we      12 established during that prior testimony      13 that somewhere around September 2010, the      14 process was shifted to the individual DCs      15 from being reviewed centrally in New      16 Jersey.</p> <p>17         MS. MILLER: Objection.</p> <p>18 BY MR. DeROCHE:</p> <p>19         Q. Do you recall that testimony      20 and the documents that established that?</p> <p>21         MS. MILLER: Objection.</p> <p>22 BY MR. DeROCHE:</p> <p>23         Q. And I guess that would be      24 consistent with the notion that</p>

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<p>1 Mr. Dugger in Indianapolis is now getting      2 the IRR as of December 2010, correct?      3 MS. MILLER: Objection.      4 THE WITNESS: Again, I know      5 there were some changes and I know      6 even with the documents, I guess,      7 you know, I'm not sure exactly      8 when or -- I also know at this      9 time the pharmacy manager, and I'm      10 theorizing here, probably would      11 have received the report also.      12 The pharmacy manager had a role in      13 this.</p> <p>14 BY MR. DeROCHE:</p> <p>15 Q. Okay. Mr. Dugger may have      16 enlisted the pharmacy manager to do the      17 review for him?</p> <p>18 MS. MILLER: Objection.</p> <p>19 THE WITNESS: No. I'm      20 saying the pharmacy manager may      21 have been doing the review.</p> <p>22 BY MR. DeROCHE:</p> <p>23 Q. Okay. So even though it was      24 directed to Mr. Dugger, the pharmacy</p>	<p>1 MS. MILLER: What page are      2 you on now?      3 MR. DeROCHE: Again, same      4 page. I haven't changed.      5 MS. MILLER: Oh. Apologies.      6 I changed.</p> <p>7 BY MR. DeROCHE:</p> <p>8 Q. Do you see that?</p> <p>9 A. I see where it says model      10 weight, yes.</p> <p>11 Q. Okay. And those are the      12 coefficients that were provided to CVS by      13 the outside vendor, the Buzzeo related      14 firm?</p> <p>15 A. I believe so.</p> <p>16 Q. And when those coefficients      17 were provided, as you mentioned earlier,      18 they were developed through the use of      19 statisticians doing an analysis of data      20 that was provided to Buzzeo by CVS?</p> <p>21 MS. MILLER: Objection.</p> <p>22 THE WITNESS: I -- I believe      23 that was a component of their      24 work.</p>
<p>1 manager was the actual person at the DC      2 who would have handled the review of the      3 IRR?</p> <p>4 MS. MILLER: Objection.</p> <p>5 THE WITNESS: There was --      6 and again, I just, I just can't      7 recall the exact dates. There was      8 a period of time where the      9 pharmacy manager would have also      10 received the report.</p> <p>11 So if -- I know you're      12 showing me a report that is sent      13 to Mr. Dugger. There's probably      14 another report out there, same      15 report, that probably would have      16 gone to the pharmacy manager.</p> <p>17 BY MR. DeROCHE:</p> <p>18 Q. So they would have printed      19 it twice at the DC?</p> <p>20 A. They -- they would have.</p> <p>21 Q. In terms of the coefficients      22 that are used, that are identified on      23 here, they are called model weight if you      24 look at the table?</p>	<p>1 Page 431</p> <p>1 BY MR. DeROCHE:      2 Q. And you -- you mentioned      3 earlier, I think a number of times, that      4 you were happy to defer to the experts in      5 the field, referring to Buzzeo, in terms      6 of the development of an algorithm that      7 would appropriately identify a --      8 potential suspicious orders?</p> <p>9 A. I think I testified that I      10 did not present myself as a statistician.</p> <p>11 Q. Mm-hmm. And you would defer      12 to Buzzeo on that -- on that score?</p> <p>13 MS. MILLER: Objection.</p> <p>14 THE WITNESS: I -- I did not      15 put forth an algorithm.</p> <p>16 BY MR. DeROCHE:</p> <p>17 Q. Now, were you familiar with      18 the score, and you'll see a score      19 referenced, the last box on the page,      20 10 -- 100765.</p> <p>21 MS. MILLER: Objection.</p> <p>22 BY MR. DeROCHE:</p> <p>23 Q. The score is the last -- the      24 last row.</p>

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<p>1 MS. MILLER: Objection.      2 Asked and answered.      3 BY MR. DeROCHE:      4 Q. Do you see -- do you see      5 that, sir?      6 MS. MILLER: Objection.      7 We've been through this multiple      8 times.      9 MR. DeROCHE: We haven't      10 been through this. Note your      11 continuing objection. We're not      12 going to agree on your      13 interpretation of what the subject      14 matter covered previously was.      15 We're talking about the same      16 lawsuit. That's probably as      17 broadly as you want to interpret      18 it. We'll note a continuing      19 objection to all my questions if      20 you want, but I'm going to      21 continue without interruption.      22 MS. MILLER: I'm just -- I      23 understand. I have a right to      24 object.</p>	<p>1 but that was a change that was made later      2 on.      3 Q. I'm not going to quibble      4 with you over the language. I can      5 understand that. But it says right in      6 there, currently a score of .15.      7 MS. MILLER: Objection.      8 BY MR. DeROCHE:      9 Q. And that was what was      10 recommended by Buzzeo, correct?      11 MS. MILLER: What -- where      12 are you -- I'm sorry, I'm not      13 saying .15 in the document.      14 MR. DeROCHE: All right.      15 Well, he read it into the record.      16 MS. MILLER: Oh, I see -- I      17 apologize. I see it now.      18 BY MR. DeROCHE:      19 Q. And the problem is on the --      20 in that column it says model weight.      21 What's the score that's indicated there?      22 A. On the last column model      23 weight says 0.65.      24 Q. And at this point in time,</p>
<p>1 MR. DeROCHE: Good enough.      2 BY MR. DeROCHE:      3 Q. The row is -- last row. You      4 see the score there?      5 A. I see the last row.      6 Q. Okay. And it describes      7 essentially what the score is intended to      8 show. Do you see that?      9 A. Under description?      10 Q. Correct. Why don't you read      11 that into the record so the folks on the      12 jury can understand what we're talking      13 about.      14 A. Okay. So under score, it      15 says, "Score decides if an order is      16 suspicious or not. If it's" -- "if it's      17 greater than a threshold value, currently      18 0.15, the order is flagged as      19 suspicious."      20 As I think I've mentioned      21 before, as part of the evolution of the      22 program, I think the terminology that      23 we're -- we're using which, you know,      24 should have said potentially suspicious,</p>	<p>1 do you know if CVS was using .65 instead      2 of .15?      3 A. I would not know.      4 Q. Go to Page 100767. And      5 let's look at the last flagged store on      6 that page. Let me know when you're      7 there.      8 A. 767?      9 Q. Correct.      10 A. Okay.      11 Q. Are you there?      12 A. I am here.      13 Q. And first of all, this      14 appears to be a hydrocodone drug that is      15 being flagged here, correct?      16 A. I see the abbreviation of      17 that in the description, yes.      18 Q. Right. It's supposed to be      19 a 7.5-milligram dose of -- of      20 hydrocodone?      21 A. Yes.      22 Q. Okay. And according to the      23 SOP, someone at the DC, you say it may be      24 the pharmacy manager, is going to look at</p>

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<p>1 this, and they are going to decide does      2 this require further review or is it      3 going to be blessed and shipped.      4 MS. MILLER: Objection.      5 BY MR. DeROCHE:      6 Q. Correct?      7 A. Yeah, again, just not -- not      8 recalling dates and times, but if there      9 was a concern, then it'd be, certainly,      10 you know --      11 Q. It would be escalated?      12 A. -- further -- further review      13 would take place.      14 Q. Escalated, I think it was      15 called in the SOP, or something like      16 that --      17 A. Yeah, escalated to involve,      18 perhaps consultation with people in the      19 field.      20 Q. Correct. There are a number      21 of things that could be done at that      22 point --      23 A. Sure.      24 Q. -- once it's escalated.</p>	<p>1 BY MR. DeROCHE:      2 Q. -- correct? You've seen      3 that?      4 MS. MILLER: -- and give him      5 a -- give him a chance to finish      6 his question before you answer,      7 please.      8 BY MR. DeROCHE:      9 Q. I saw hundreds of IRRs, some      10 of them had handwritten notes. And      11 you've seen that too, I assume --      12 MS. MILLER: Objection.      13 BY MR. DeROCHE:      14 Q. -- where the analyst who      15 actually did the escalated review wrote      16 down what they -- what they looked at.      17 That's not unusual, right?      18 MS. MILLER: Objection.      19 THE WITNESS: I can't -- I      20 can't recall a particular      21 circumstance, but I know there was      22 a file kept.      23 BY MR. DeROCHE:      24 Q. Correct.</p>
<p>1 And because it was      2 escalated, there would be documentation      3 of some type that would be retained so if      4 anybody asked later, in particular, maybe      5 the DEA, CVS could show, yes, we did our      6 duty and we looked at this order and we      7 escalated it and we did some due      8 diligence on this order to satisfy      9 ourselves that it's not suspicious,      10 correct?      11 MS. MILLER: Objection.      12 THE WITNESS: You know, I      13 can't recall the exact process,      14 but I -- I know there was -- you      15 know, there was a review process.      16 BY MR. DeROCHE:      17 Q. Retention of two years, I      18 believe was said?      19 A. Yes. Yes.      20 Q. So it'd be somehow attached      21 or noted. And even it could be even      22 noted by hand on the IRR itself --      23 A. Yes, yes.      24 MS. MILLER: Just, wait --</p>	<p>1 MS. MILLER: Jim, can we      2 take a break?      3 BY MR. DeROCHE:      4 Q. So if they're --      5 MR. DeROCHE: Actually, let      6 me finish with this exhibit, then      7 we can take a break.      8 MS. MILLER: We've been      9 going for -- that would be great.      10 MR. DeROCHE: All right.      11 Let me -- let me finish with this      12 one, then we'll -- we'll --      13 hopefully I'll not have too long.      14 BY MR. DeROCHE:      15 Q. All right. So pharmacy      16 manager or someone at the distribution      17 center would have looked at this IRR and      18 selected the flags for escalation, and      19 those flagged and escalated orders would      20 have some documentation showing that they      21 were looked at and deemed not      22 suspicious --      23 MS. MILLER: Objection.      24 BY MR. DeROCHE:</p>

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<p>1 Q. -- correct?</p> <p>2 A. I can't recall on the</p> <p>3 suspicious versus non-suspicious or</p> <p>4 potentially suspicious.</p> <p>5 Q. I understand that all of</p> <p>6 these, according to the algorithm, have</p> <p>7 already been flagged as potentially</p> <p>8 suspicious, correct? Yes?</p> <p>9 A. They would be potentially,</p> <p>10 yes.</p> <p>11 Q. Yes. And then some of them</p> <p>12 continued to be considered potentially</p> <p>13 suspicious and worthy of an escalated</p> <p>14 review, correct?</p> <p>15 MS. MILLER: Objection.</p> <p>16 THE WITNESS: Yeah, I guess</p> <p>17 in some circumstances, but, again,</p> <p>18 each situation -- each situation</p> <p>19 would sit on its own.</p> <p>20 BY MR. DeROCHE:</p> <p>21 Q. Well, I understand that --</p> <p>22 A. Right.</p> <p>23 Q. -- but we're talking about</p> <p>24 what happens with this report right now.</p>	<p>1 BY MR. DeROCHE:</p> <p>2 Q. Well, that's what I'm trying</p> <p>3 to get at because, I mean, the escalated</p> <p>4 review I understand. Now, beyond simply</p> <p>5 looking at the IRR report and saying that</p> <p>6 looks fine, that's what an escalated</p> <p>7 review is that is documented. When</p> <p>8 something beyond just the IRR is looked</p> <p>9 at, that's considered escalated review</p> <p>10 from the IRR, correct?</p> <p>11 MS. MILLER: Objection.</p> <p>12 THE WITNESS: I can't -- you</p> <p>13 know, trying to look back and</p> <p>14 think of the particulars, I mean,</p> <p>15 I just -- I can't fully recall the</p> <p>16 particulars of the terminology</p> <p>17 that we were using at the time.</p> <p>18 BY MR. DeROCHE:</p> <p>19 Q. Okay.</p> <p>20 A. Now, I know -- I know, you</p> <p>21 know, the IRR was being reviewed.</p> <p>22 Whether it was centrally or individual</p> <p>23 distribution center, and I know there</p> <p>24 were instructions as far as maintaining</p>
<p>1 And what happens with this report is</p> <p>2 someone looks at it. It's not ignored.</p> <p>3 And then a certain subset of what is on</p> <p>4 the report gets chosen, selected, for</p> <p>5 escalation for additional review,</p> <p>6 correct?</p> <p>7 MS. MILLER: Objection.</p> <p>8 THE WITNESS: Further --</p> <p>9 further questions asked perhaps.</p> <p>10 BY MR. DeROCHE:</p> <p>11 Q. Yes. Okay. And the ones</p> <p>12 that aren't selected for additional</p> <p>13 review are approved and shipped?</p> <p>14 MS. MILLER: Objection.</p> <p>15 THE WITNESS: They would --</p> <p>16 they would all -- you know, to my</p> <p>17 knowledge, they would all be --</p> <p>18 they would all be reviewed.</p> <p>19 I mean, there wouldn't be</p> <p>20 just some arbitrarily not</p> <p>21 reviewed. There would be some,</p> <p>22 you know, initial review process.</p> <p>23 I'm sure there are varying degrees</p> <p>24 of that review process.</p>	<p>1 files, you know, for a period of time. I</p> <p>2 know that was taking place.</p> <p>3 Q. Okay. If there's no</p> <p>4 documentation for -- for instance, let's</p> <p>5 stick with 100767, the last entry, right,</p> <p>6 and there's no indication anywhere on the</p> <p>7 IRR itself or in any file that there was</p> <p>8 any further review other than looking at</p> <p>9 what's on the IRR.</p> <p>10 So from looking at the IRR</p> <p>11 itself, how could someone determine</p> <p>12 whether or not this is a suspicious order</p> <p>13 that needs to be reported to the DEA in</p> <p>14 compliance with the DEA regulations?</p> <p>15 MS. MILLER: Objection.</p> <p>16 THE WITNESS: Just because</p> <p>17 it's appearing in this report,</p> <p>18 that doesn't automatically say</p> <p>19 that it has reported to the DEA.</p> <p>20 BY MR. DeROCHE:</p> <p>21 Q. Again, you've got to listen</p> <p>22 to my question, sir. I'm sorry. Maybe I</p> <p>23 was unclear.</p> <p>24 From looking at what's on</p>

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<p>1 this report --</p> <p>2 A. Yes.</p> <p>3 Q. -- how can someone determine</p> <p>4 whether or not this is an actual</p> <p>5 suspicious order as opposed to a</p> <p>6 potential suspicious order?</p> <p>7 MS. MILLER: Objection.</p> <p>8 THE WITNESS: It's been --</p> <p>9 it's been a few years since I've</p> <p>10 seen this report. And I just -- I</p> <p>11 don't recall the process as far as</p> <p>12 interpreting the numbers and how</p> <p>13 that would take place, so I</p> <p>14 can't -- you know, I don't feel</p> <p>15 confident in commenting on it.</p> <p>16 BY MR. DeROCHE:</p> <p>17 Q. Okay. The SOP that you</p> <p>18 looked at earlier, which was issued by</p> <p>19 your department to guide the use of this</p> <p>20 report, said, among other things, that</p> <p>21 the month-to-date number should be</p> <p>22 observed in relation to the lags that</p> <p>23 also appeared on the report.</p> <p>24 Do you recall that?</p>	<p>1 A. Thank you.</p> <p>2 THE VIDEOGRAPHER: Going off</p> <p>3 the record. The time is 4:44.</p> <p>4 (Short break.)</p> <p>5 THE VIDEOGRAPHER: Going</p> <p>6 back on record. Beginning of</p> <p>7 Media File 11. The time is</p> <p>8 5:00 p.m.</p> <p>9 BY MR. DeROCHE:</p> <p>10 Q. Okay, sir. So we were going</p> <p>11 through Exhibit 201, and we were looking</p> <p>12 at the IRR, in particular with respect to</p> <p>13 one of the orders. And I guess what I'm</p> <p>14 trying to figure out is, someone needed,</p> <p>15 on the first pass to the side, whether or</p> <p>16 not the orders on this IRR were worthy of</p> <p>17 additional escalated review. And</p> <p>18 according to the SOP, they were directed</p> <p>19 to look at the month to date and then</p> <p>20 also look at the lags, and see if there</p> <p>21 was a problem with the amount in relation</p> <p>22 to the lags and the pattern of ordering</p> <p>23 and so forth. So that's where we are on</p> <p>24 this document.</p>
<p>1 MS. MILLER: Objection.</p> <p>2 BY MR. DeROCHE:</p> <p>3 Q. Reading that earlier?</p> <p>4 MS. MILLER: If you want to</p> <p>5 show him the document --</p> <p>6 MR. DeROCHE: No, I don't</p> <p>7 want to -- I'm just going to ask</p> <p>8 him -- I'm not --</p> <p>9 THE WITNESS: Can I take a</p> <p>10 break? I have to go to the</p> <p>11 bathroom.</p> <p>12 BY MR. DeROCHE:</p> <p>13 Q. Not with a question pending.</p> <p>14 When we're done with this question, then</p> <p>15 we can go on to a break. All right.</p> <p>16 So --</p> <p>17 A. I can't take a break?</p> <p>18 Q. Not with a question pending.</p> <p>19 We'll take a break in a moment.</p> <p>20 A. What document am I looking</p> <p>21 at?</p> <p>22 Q. You know what? I'll</p> <p>23 withdraw the question, and you can go</p> <p>24 take a break.</p>	<p>1 Then it looks -- if you look</p> <p>2 at the -- back at the first page, if you</p> <p>3 flip back and just keep where you are,</p> <p>4 first page. That's fine. No, the very</p> <p>5 first page, top page. You'll see that</p> <p>6 this actually is one of the signed IRRs,</p> <p>7 correct, someone signed this thing and</p> <p>8 dated it?</p> <p>9 MS. MILLER: Objection to</p> <p>10 the preamble of the question.</p> <p>11 BY MR. DeROCHE:</p> <p>12 Q. Correct?</p> <p>13 A. There does appear to be a</p> <p>14 signature on this document.</p> <p>15 Q. Can you tell who that is?</p> <p>16 A. No.</p> <p>17 Q. Okay. Certainly it doesn't</p> <p>18 look like Terrence Dugger, so maybe you</p> <p>19 were correct that the Rx manager was the</p> <p>20 one who was actually doing this review at</p> <p>21 this point in time?</p> <p>22 A. Yeah, I'm not -- I'm not a</p> <p>23 handwriting expert.</p> <p>24 Q. Sure.</p>

<p>1 A. But that's --</p> <p>2 Q. It doesn't look like</p> <p>3 Terrence Dugger to me. How about to you?</p> <p>4 MS. MILLER: Objection.</p> <p>5 THE WITNESS: Yeah, I --</p> <p>6 BY MR. DeROCHE:</p> <p>7 Q. In any event someone --</p> <p>8 A. Again, I don't -- I don't</p> <p>9 know.</p> <p>10 Q. -- someone signed this as an</p> <p>11 indication as they were directed to do in</p> <p>12 the SOP that this had been reviewed. So</p> <p>13 if anybody questioned later, there was</p> <p>14 proof that it actually had been looked</p> <p>15 at, correct?</p> <p>16 MS. MILLER: Objection. To</p> <p>17 the extent you're referencing the</p> <p>18 SOP --</p> <p>19 BY MR. DeROCHE:</p> <p>20 Q. Correct?</p> <p>21 MS. MILLER: -- if you want</p> <p>22 to show it to him so he can review</p> <p>23 it --</p> <p>24 MR. DeROCHE: Noted.</p>	<p>Page 450</p> <p>1 indicating it was reviewed, correct?</p> <p>2 MS. MILLER: Objection.</p> <p>3 BY MR. DeROCHE:</p> <p>4 Q. You can answer.</p> <p>5 A. Yeah, there -- there appears</p> <p>6 to be a signature dated 12/14/2010 on</p> <p>7 this IRR document.</p> <p>8 Q. Going back to 100767, and</p> <p>9 again, these are number of flagged orders</p> <p>10 on this page in relation to the</p> <p>11 Indianapolis DC that have been reviewed.</p> <p>12 And there's no indication, at least with</p> <p>13 any handwriting on this report itself,</p> <p>14 that there was any escalated review for</p> <p>15 any of these orders, correct?</p> <p>16 A. I just see the report.</p> <p>17 There are also could have been a separate</p> <p>18 file that would have had that information</p> <p>19 in it. I just don't know.</p> <p>20 Q. Okay. Well, with respect to</p> <p>21 the reports, at least the ones -- and</p> <p>22 I've looked at hundreds of them in New</p> <p>23 York City at one point, when there was</p> <p>24 some additional documentation, it was</p>
<p>Page 451</p> <p>1 MS. MILLER: -- it would be</p> <p>2 helpful.</p> <p>3 MR. DeROCHE: Noted</p> <p>4 objection. Just objection to form</p> <p>5 only, please.</p> <p>6 THE WITNESS: And I guess,</p> <p>7 you know, with the, you know -- I</p> <p>8 know I'm being repetitive, but the</p> <p>9 evolution of a process --</p> <p>10 BY MR. DeROCHE:</p> <p>11 Q. I understand.</p> <p>12 A. -- the dates of the process,</p> <p>13 the -- the SOP, the draft version, the</p> <p>14 evolution --</p> <p>15 Q. I understand, sir.</p> <p>16 A. -- of the SOP. I just -- I</p> <p>17 can't specifically say that at this date,</p> <p>18 and this time, you know, this version of</p> <p>19 the SOP was in place.</p> <p>20 Q. Fair enough. And I'm not</p> <p>21 going to hold you to it.</p> <p>22 A. Okay.</p> <p>23 Q. I'm just suggesting that</p> <p>24 someone signed this one appropriately</p>	<p>Page 453</p> <p>1 actually stuck into the IRR, you know,</p> <p>2 right after the page that it related to,</p> <p>3 there was actually a report put in there</p> <p>4 and retained in the accordion file IRR.</p> <p>5 Are you familiar with that,</p> <p>6 sir?</p> <p>7 MS. MILLER: Objection to --</p> <p>8 BY MR. DeROCHE:</p> <p>9 Q. -- in terms of receiving --</p> <p>10 MS. MILLER: -- the</p> <p>11 testimony by counsel.</p> <p>12 THE WITNESS: I can't -- I</p> <p>13 can't recall the process. I know</p> <p>14 we had -- there were separate</p> <p>15 files. And each DC would be</p> <p>16 responsible for having a file</p> <p>17 around the IRR.</p> <p>18 BY MR. DeROCHE:</p> <p>19 Q. Okay.</p> <p>20 A. I don't recall if they</p> <p>21 included the IRR or the investigation. I</p> <p>22 just can't recall.</p> <p>23 Q. Got it. Now, in terms of</p> <p>24 actually looking at this report in</p>

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<p>1 deciding whether or not to escalate these      2 orders, how many lags do you see that      3 were available for the hydrocodone order      4 on the last order listed on Page 100767?</p> <p>5 MS. MILLER: Objection.</p> <p>6 THE WITNESS: How many lags?</p> <p>7 BY MR. DeROCHE:</p> <p>8 Q. Yeah. How many lags are      9 there?</p> <p>10 A. Are you looking at the      11 bottom line?</p> <p>12 Q. Correct.</p> <p>13 A. Just in reading the report,      14 it states month-to-date 500. Lag 1, 200;      15 Lag 2, 200; Lag 3, zero; 4, zero; 5,      16 zero; 6, zero.</p> <p>17 Q. If you go to the next page,      18 which is 100768. You'll see there's a      19 hydrocodone order, third order down.</p> <p>20 Do you see that, sir?</p> <p>21 A. That's Store 3362?</p> <p>22 Q. Correct.</p> <p>23 A. I see that.</p> <p>24 Q. You see their month-to-date</p>	<p>1 A. I don't know when it went to      2 active ingredient if it would still list      3 the items on top of that. I'm just not      4 sure. I just can't recall.</p> <p>5 Q. Do you know if this is, as      6 of December 14, 2010, if you were still      7 using active ingredient versus --</p> <p>8 MS. MILLER: Objection.</p> <p>9 THE WITNESS: I don't recall      10 the dates. I'd have to -- I don't      11 recall the dates off the top of my      12 head. I know we made a change.</p> <p>13 BY MR. DeROCHE:</p> <p>14 Q. Right.</p> <p>15 A. I just don't recall exactly      16 when the change took place.</p> <p>17 Q. Well, the change was done      18 were the retunement document, correct,      19 that we looked at earlier?</p> <p>20 MS. MILLER: Objection.</p> <p>21 BY MR. DeROCHE:</p> <p>22 Q. It was delivered in February      23 of 2011 and then sometime thereafter      24 implemented?</p>
<p>1 is 2,000 doses, correct?</p> <p>2 A. I see month to date 2,000.</p> <p>3 Q. Okay.</p> <p>4 A. I don't recall if that means      5 doses or not. I don't recall that.</p> <p>6 Q. Well, at this time this      7 relates to a particular drug, correct?</p> <p>8 A. It is under hydrocodone,      9 yes.</p> <p>10 Q. Right. So it is relating to      11 an item as opposed to an active      12 ingredient, correct?</p> <p>13 MS. MILLER: Objection.</p> <p>14 THE WITNESS: It -- I can't      15 recall the IRR report as far as      16 when it was item versus when it      17 was active ingredient.</p> <p>18 BY MR. DeROCHE:</p> <p>19 Q. You can tell by looking at      20 it, can't you?</p> <p>21 A. Oh, I can see that it says      22 hydrocodone. But I don't know --</p> <p>23 Q. Well, it's listed NDC,      24 correct?</p>	<p>1 A. Which --</p> <p>2 Q. So that would indicate --</p> <p>3 I'll show you what we previously marked      4 as 150. That's an e-mail. And then the      5 retunement document is attached. It was      6 delivered in February of 2011.</p> <p>7 A. Okay.</p> <p>8 MS. MILLER: Objection.</p> <p>9 BY MR. DeROCHE:</p> <p>10 Q. So as of December 2010,      11 we're still on item as opposed to active      12 ingredient?</p> <p>13 MS. MILLER: Objection.</p> <p>14 BY MR. DeROCHE:</p> <p>15 Q. Right?</p> <p>16 MS. MILLER: Asked and      17 answered.</p> <p>18 BY MR. DeROCHE:</p> <p>19 Q. Correct?</p> <p>20 A. Again, not being able to      21 recall the dates and just going off the      22 report.</p> <p>23 Q. Well, you don't -- you have      24 to recall the date when you have it in</p>

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<p>1 your hand right in front of you, sir? Or      2 are you trying to --      3 A. No.      4 Q. -- skate around the      5 question?      6 A. No.      7 MS. MILLER: Objection.      8 BY MR. DeROCHE:      9 Q. So I think we need      10 forthright questions here.      11 A. I'm not --      12 Q. So skating --      13 A. I'm just -- I'm looking at      14 the document that you provided, and I do      15 see that on February 9, 2011, it's titled      16 "Retunement."      17 Q. Right.      18 A. I don't recall this      19 document. And I just can't --      20 Q. Can you use logic, sir, and      21 determine that if something is delivered      22 to you on February -- in February of      23 2011, that moved from using item to      24 active ingredient, that as of</p>	<p>1 BY MR. DeROCHE:      2 Q. All right.      3 A. I'm just trying to recall      4 the dates, and I don't know, could a      5 change have been made before this      6 document came into place? I just don't      7 recall that. That's -- I'm not trying to      8 skate. I'm just -- that's how I'm      9 looking at it.      10 Q. Okay. So you got the      11 retunement document. You moved from      12 using six months of lag to 12 months of      13 lag as well, correct? You're looking      14 there. You've got the retunement      15 document right in front of you. Go ahead      16 and look through it.      17 A. Okay. I do see the line at      18 12 months worth of data.      19 Q. And going back to using      20 logic for just a moment, the IRR that you      21 have in front of you, 2011, has six months      22 of lag, right?      23 MS. MILLER: Objection.      24 THE WITNESS: The document</p>
<p style="text-align: center;">Page 459</p> <p>1 December 2010, earlier in time, you were      2 still using item instead of active      3 ingredient? Can we use logic and come to      4 that conclusion for the jury so that we      5 don't have to dance anymore?      6 MS. MILLER: Objection.      7 THE WITNESS: I think from      8 a --      9 BY MR. DeROCHE:      10 Q. Tell the jury if you can      11 answer that question, sir.      12 A. From a --      13 Q. They're looking right now.      14 MS. MILLER: Objection.      15 THE WITNESS: From a --      16 BY MR. DeROCHE:      17 Q. Go ahead. Can you use logic      18 and come to that conclusion so we can      19 stop dancing and answer questions and      20 move on?      21 MS. MILLER: Objection.      22 THE WITNESS: From a logical      23 standpoint, the documents in front      24 of me, I hear what you're saying.</p>	<p style="text-align: center;">Page 461</p> <p>1 does have -- indicating six lags,      2 yes.      3 BY MR. DeROCHE:      4 Q. And we went through this      5 earlier when Mr. Mortelliti was talking      6 about how the data was missing because      7 you were using the item versus the active      8 ingredient. And, therefore, you started      9 having IRRs with lags that were noted as      10 zero.      11 And confirm for me, sir, how      12 many lags are zero on Page 100768 with      13 respect to the hydrocodone order      14 referenced there?      15 MS. MILLER: Objection.      16 THE WITNESS: In regards to      17 Store 3362?      18 BY MR. DeROCHE:      19 Q. Correct, sir. It's the only      20 one that's there in hydrocodone.      21 A. Okay.      22 MS. MILLER: Objection.      23 BY MR. DeROCHE:      24 Q. Go ahead.</p>

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<p>1        A. I see, according to this, I      2 have month-to-date at 2,000. Lag 1, 500;      3 Lag 2, 500. And then I see Lag 3, Lag 4,      4 Lag 5, Lag 6 on this report noted as      5 zero.</p> <p>6        Q. Right. Now, do you know if      7 that was there were no orders for that      8 drug for that month for that store or      9 because this is a situation where      10 Mr. Mortelliti was crying wolf about      11 that -- where the actual history was      12 missing?</p> <p>13        MS. MILLER: Objection.</p> <p>14        THE WITNESS: I wouldn't      15 know on this particular store.</p> <p>16 BY MR. DeROCHE:</p> <p>17        Q. Okay. This store, as of      18 12/14/2010 has a month-to-date of 2,000.      19 And it shows the first lag is 500, and      20 the second lag is 500. And zeros up to      21 that point.</p> <p>22        Would you consider a 2,000      23 order month-to-date to be unusual for the      24 store or not?</p>	<p>1 states, yes.</p> <p>2        Q. Should this have been      3 cleared or should this have been reviewed      4 further?</p> <p>5        MS. MILLER: Objection.</p> <p>6        THE WITNESS: Again, I don't      7 recall what parameters in      8 interpreting the report.</p> <p>9 BY MR. DeROCHE:</p> <p>10        Q. It's got a score of .88,      11 correct, on this order?</p> <p>12        A. It states .88, yes.</p> <p>13        Q. Okay. And the scoring      14 system was between zero and one, correct?</p> <p>15        MS. MILLER: Objection.</p> <p>16        THE WITNESS: I'd have to      17 look into that. I don't recall.</p> <p>18 BY MR. DeROCHE:</p> <p>19        Q. Do you know if the scoring      20 system changed in terms of the range      21 between the original algorithm and the      22 retuned algorithm?</p> <p>23        MS. MILLER: Objection.</p> <p>24        THE WITNESS: I know during</p>
<p>1        MS. MILLER: Objection.</p> <p>2        THE WITNESS: I just -- I      3 can't recall the parameters being      4 used as far as interpreting the      5 report.</p> <p>6 BY MR. DeROCHE:</p> <p>7        Q. Someone looking at this      8 report is going to have to make some      9 determinations based on what's on here.</p> <p>10        Do you know what that      11 determination would have been at that      12 point?</p> <p>13        MS. MILLER: Objection.</p> <p>14        THE WITNESS: Again, I      15 just -- I don't recall the      16 interpretation of the report.</p> <p>17 BY MR. DeROCHE:</p> <p>18        Q. The next page, 100769, again      19 there's only one hydrocodone order on      20 here for Store 4636. And it shows a      21 month-to-date of 400, the first three      22 lags are 100 each. And then zeros for 4,      23 5, and 6, correct?</p> <p>24        A. That's what the report</p>	<p>1        the period of time I was employed      2 with CVS, I know that the      3 algorithm did change. As far as      4 the particulars on the score and      5 the lags, I just don't recall      6 those details.</p> <p>7 BY MR. DeROCHE:</p> <p>8        Q. You don't know if the      9 potential score was between zero and one      10 for the original algorithm?</p> <p>11        A. I don't remember.</p> <p>12        MS. MILLER: Objection.</p> <p>13 BY MR. DeROCHE:</p> <p>14        Q. Do you know if this order      15 was cleared from looking at this document      16 that we have in front of us, or was there      17 an additional review done?</p> <p>18        A. I wouldn't know that.</p> <p>19        Q. Okay. We're going to look      20 quickly at Exhibit 56. And I believe you      21 have it over there already.</p> <p>22        MS. MILLER: Is that one we      23 have?</p> <p>24 BY MR. DeROCHE:</p>

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<p>1 Q. If you can find 56. It's an      2 August 13, 2010 memo from Mr. Mortelliti      3 to yourself.</p> <p>4 Are you there? Do you have      5 it in front of you?</p> <p>6 A. Yes.</p> <p>7 Q. So this is talking about      8 moving the score from .15 to .65. And it      9 appears that that was -- determination      10 was made based on some testing that was      11 done by Mr. Mortelliti; is that correct?</p> <p>12 MS. MILLER: Objection.</p> <p>13 THE WITNESS: If you just      14 give me one moment to read through      15 this quickly.</p> <p>16 BY MR. DeROCHE:</p> <p>17 Q. Sure.</p> <p>18 A. Yes, it does --</p> <p>19 Q. Okay.</p> <p>20 A. It does speak to changing      21 the score.</p> <p>22 Q. Right. It wasn't done -- it      23 appears -- it wasn't done in a haphazard      24 manner, but actually was subject to some</p>	<p>1 time. But, you know, perhaps that      2 language wasn't updated. I -- I don't      3 know.</p> <p>4 Q. Sure.</p> <p>5 A. But the model weight does      6 say .65.</p> <p>7 Q. Okay. And then subsequent      8 to this report, again a retunement was      9 done, we looked at that retunement      10 document a moment ago. And the      11 retunement involved really a brand-new      12 algorithm, for -- for all intents and      13 purposes, in terms of, you know, it      14 was -- it was a substantial change in the      15 algorithm for purposes of flagging      16 orders.</p> <p>17 MS. MILLER: Objection.</p> <p>18 BY MR. DeROCHE:</p> <p>19 Q. You would agree with that,      20 correct?</p> <p>21 MS. MILLER: Objection.</p> <p>22 THE WITNESS: Yeah, I -- I      23 don't know if I would say it was a      24 brand-new algorithm. I think</p>
<p>1 testing?</p> <p>2 MS. MILLER: Objection.</p> <p>3 THE WITNESS: Based -- again      4 I don't recall the memo. But in      5 reading the memo, it does state      6 that there was testing done. Yes,      7 it wasn't just arbitrarily      8 changed.</p> <p>9 BY MR. DeROCHE:</p> <p>10 Q. Sure. Sure. I understand      11 that.</p> <p>12 And that August 13, 2010      13 memo was again consistent with the idea      14 that as of December of 2010, looking at      15 Exhibit 201, the score apparently is now      16 .65 for purposes of flagging orders, 201      17 we just looked at?</p> <p>18 A. Looking at the report, when      19 you look at the table it actually says      20 currently .15 on it.</p> <p>21 Q. But then under the model      22 weight column it says .65.</p> <p>23 A. Right. So I -- again, I      24 haven't seen this report in quite some</p>	<p>1 it -- I thought the -- was just      2 what I can recall. I thought the      3 algorithm itself, you know, stayed      4 somewhat steady, that some of the      5 numbers within the algorithm would      6 have changed. That's just all I      7 can recall.</p> <p>8 BY MR. DeROCHE:</p> <p>9 Q. One of the coefficients, the      10 types of coefficients, the calculation of      11 coefficients, all were changed      12 substantially when the retunement was      13 done. Isn't that correct?</p> <p>14 MS. MILLER: Objection.</p> <p>15 THE WITNESS: I can't -- I      16 can't recall all the things that      17 were changed in it.</p> <p>18 BY MR. DeROCHE:</p> <p>19 Q. Let me show you what we've      20 marked as Exhibit 200.</p> <p>21 (Document marked for      22 identification as Exhibit      23 CVS-Devlin-P-200.)</p> <p>24 BY MR. DeROCHE:</p>

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<p>1 Q. This is an IRR, it looks      2 like it was directed to Knoxville on      3 8/31/2012.</p> <p>4 And if you'd flip open the      5 table, which is on the second page of      6 this document, sir?</p> <p>7 A. Yes.</p> <p>8 Q. And if you flip open the      9 table for the Exhibit 201 that you just      10 looked at, and have them side by side, if      11 you would.</p> <p>12 A. Okay.</p> <p>13 Q. And if you look at these two      14 tables that kind of reflect the      15 algorithms, what the attributes are,      16 you'll see that there are substantial      17 differences, correct, between the      18 attributes on the old algorithm versus      19 the attributes on the retuned algorithm?</p> <p>20 MS. MILLER: Objection.</p> <p>21 BY MR. DeROCHE:</p> <p>22 Q. Agreed?</p> <p>23 MS. MILLER: Objection.</p> <p>24 THE WITNESS: Are you</p>	<p>1 coefficients that are used.      2 MS. MILLER: Objection.</p> <p>3 BY MR. DeROCHE:</p> <p>4 Q. Not to mention adding an      5 additional six months of data?      6 MS. MILLER: Objection.</p> <p>7 Do you need time to read the      8 document?</p> <p>9 BY MR. DeROCHE:</p> <p>10 Q. Correct? You can answer.</p> <p>11 A. Can I just take a little      12 moment here to compare?</p> <p>13 Again, just in the essence      14 of time, I -- you know, I do notice that      15 there are some, you know, different      16 languages or attributes used. I do see      17 some similarities.</p> <p>18 Again, I would -- I would      19 defer to the statisticians as far as what      20 the actual differences are, as far as one      21 algorithm versus the other algorithm.</p> <p>22 Q. Sure. And obviously the      23 coefficients are not the same as well,      24 correct?</p>
<p>1 looking at the model weight      2 column?</p> <p>3 BY MR. DeROCHE:</p> <p>4 Q. Sorry, what's that?</p> <p>5 A. Is this the model weight      6 column?</p> <p>7 Q. Oh, we can look -- no, look      8 at the attribute itself. Zscore6range is      9 the top attribute, right, for the retuned      10 model?</p> <p>11 A. Yes.</p> <p>12 Q. Then you have PZscorerange.</p> <p>13 A. Okay.</p> <p>14 Q. Right? Then you have      15 Zscore12range?</p> <p>16 A. Yes.</p> <p>17 Q. And you have a pairing of      18 each of those with, I think an additional      19 coefficient. And then as you go down,      20 there -- it looks like there's very      21 little consistency between the old      22 algorithm and the new algorithm. The new      23 algorithm is really a substantial change      24 from the old algorithm in terms of</p>	<p>1 MS. MILLER: Objection.</p> <p>2 BY MR. DeROCHE:</p> <p>3 Q. I mean the -- the model      4 weight, excuse me --</p> <p>5 A. The model weight --</p> <p>6 Q. Yeah, the model weight      7 coefficients, for the coefficients.</p> <p>8 MS. MILLER: Objection.</p> <p>9 THE WITNESS: It's -- yeah,      10 can see it was -- on the score,      11 that's similar. Some slight      12 changes.</p> <p>13 And again, I'd probably want      14 an hour to go through this      15 properly and identify the exact      16 changes between each but --</p> <p>17 BY MR. DeROCHE:</p> <p>18 Q. The coefficients aren't the      19 same, correct?</p> <p>20 MS. MILLER: Objection.</p> <p>21 THE WITNESS: Well, I do      22 notice the model, the model as far      23 as when you say coefficient model      24 weight. That's the column you're</p>

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<p>1        looking at?</p> <p>2 BY MR. DeROCHE:</p> <p>3        Q. The score you mean?</p> <p>4        A. Right.</p> <p>5        Q. Well, I understand, but</p> <p>6 we'll get to that in a moment.</p> <p>7        A. Right.</p> <p>8        Q. But leaving aside the .65 at</p> <p>9 the bottom, the coefficients bear no</p> <p>10 resemblance to each other?</p> <p>11        MS. MILLER: Objection.</p> <p>12 BY MR. DeROCHE:</p> <p>13        Q. Correct?</p> <p>14        A. Yeah, they're -- they're</p> <p>15 different numbers on the document, yes.</p> <p>16        Q. Okay. And again, the</p> <p>17 retunement document was delivered and</p> <p>18 then implemented by CVS based on the</p> <p>19 statisticians' analysis and design of the</p> <p>20 algorithm, correct?</p> <p>21        MS. MILLER: Objection.</p> <p>22        THE WITNESS: They -- they</p> <p>23 certainly played a big role in --</p> <p>24 in the changes, yes.</p>	<p>1        Q. What's that? Can you hand</p> <p>2 me that? It's 150, I believe.</p> <p>3 Exhibit 150.</p> <p>4        MS. MILLER: Do you have</p> <p>5 that?</p> <p>6 BY MR. DeROCHE:</p> <p>7        Q. Yeah, there we go. I'm</p> <p>8 going to hand you Exhibit 150. And we're</p> <p>9 going to look at Page 114652. You'll see</p> <p>10 at the end, that's the coefficients that</p> <p>11 were provided with the retunement.</p> <p>12        Do you see that, sir?</p> <p>13        A. I do see that, yes.</p> <p>14        Q. If you look at the second</p> <p>15 coefficient down, labeled B-1.</p> <p>16        Do you see that, sir?</p> <p>17        A. I do see it.</p> <p>18        Q. 1.0450. Okay. And if you</p> <p>19 look at the top.</p> <p>20        A. 1.045.</p> <p>21        Q. 45, right. Note a zero at</p> <p>22 the end too.</p> <p>23        But if you go to the</p> <p>24 Exhibit 200, the table that we were just</p>
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<p>1 BY MR. DeROCHE:</p> <p>2        Q. Okay. And they delivered a</p> <p>3 document to you, addressed to you,</p> <p>4 telling you, this is the new algorithm we</p> <p>5 recommend, scoring system, and so forth,</p> <p>6 including giving you these actual</p> <p>7 coefficients that are being used,</p> <p>8 correct?</p> <p>9        MS. MILLER: Objection.</p> <p>10        THE WITNESS: Based on</p> <p>11 the -- based on the documents I've</p> <p>12 seen, it's -- it's not a change</p> <p>13 that I would have implemented, but</p> <p>14 probably would have worked with</p> <p>15 the DIT group to --</p> <p>16 BY MR. DeROCHE:</p> <p>17        Q. Right.</p> <p>18        A. -- have that, put that in</p> <p>19 place.</p> <p>20        Q. Fair enough. Go back to the</p> <p>21 retunement document.</p> <p>22        MS. MILLER: What number is</p> <p>23 that, please?</p> <p>24 BY MR. DeROCHE:</p>	<p>1 looking at, the first model weight is</p> <p>2 consistent with that number, correct?</p> <p>3        A. The model weight of 1.045</p> <p>4 does match up to 1.045. It's just an</p> <p>5 extra zero.</p> <p>6        MR. DeROCHE: Leave the</p> <p>7 retunement table up.</p> <p>8 BY MR. DeROCHE:</p> <p>9        Q. If you go to the second</p> <p>10 number, second coefficient that's</p> <p>11 referenced in the retunement document,</p> <p>12 0.4589. If you go to the IRR, that</p> <p>13 coefficient matches up, correct?</p> <p>14        A. You see the B-2 in this</p> <p>15 retunement document is .4589. And in the</p> <p>16 IRR, I also see .589.</p> <p>17        Q. Great. Next one down,</p> <p>18 again, consistent. 1.0889. Recommended</p> <p>19 by the statisticians, used by CVS, right?</p> <p>20        MS. MILLER: Objection.</p> <p>21        THE WITNESS: The numbers</p> <p>22 correlate, yes.</p> <p>23 BY MR. DeROCHE:</p> <p>24        Q. Okay. Next number down,</p>

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<p>1 does that correlate as well?</p> <p>2 A. Well --</p> <p>3 Q. They are out of order.</p> <p>4 A. They're out of order.</p> <p>5 Q. I understand. But they're</p> <p>6 the same --</p> <p>7 A. Okay.</p> <p>8 Q. -- correct?</p> <p>9 MS. MILLER: Objection.</p> <p>10 THE WITNESS: I see on one</p> <p>11 document 1.2615, and I see on the</p> <p>12 other document 1.2615.</p> <p>13 BY MR. DeROCHE:</p> <p>14 Q. Okay. And you see 2.51 --</p> <p>15 54, excuse me 21, correct?</p> <p>16 A. I do see that. Yes.</p> <p>17 Q. And then .75 is on the</p> <p>18 retunement document as well as the IRR,</p> <p>19 correct?</p> <p>20 A. Correct.</p> <p>21 Q. And then .5, correct?</p> <p>22 A. Yes, sir.</p> <p>23 Q. Okay. These appear to be</p> <p>24 the retuned coefficients that are</p>	<p>1 MS. MILLER: Previous page</p> <p>2 of Exhibit 150?</p> <p>3 MR. DeROCHE: Of</p> <p>4 Exhibit 150.</p> <p>5 THE WITNESS: I mean, I see</p> <p>6 a B-0 on here. But as far as</p> <p>7 interpreting what all this means,</p> <p>8 I have no idea.</p> <p>9 BY MR. DeROCHE:</p> <p>10 Q. Now, when the retuned</p> <p>11 document -- retuned algorithm was</p> <p>12 provided by Buzzeo to CVS, the experts at</p> <p>13 Buzzeo recommended a .15 score as being</p> <p>14 the indicator of a potentially suspicious</p> <p>15 order, correct?</p> <p>16 MS. MILLER: Objection.</p> <p>17 THE WITNESS: I don't recall</p> <p>18 that.</p> <p>19 BY MR. DeROCHE:</p> <p>20 Q. If you look at the document</p> <p>21 sir, go to the -- go to the retuned</p> <p>22 document. You'll see it's underlined.</p> <p>23 So it won't be hard to find. There is an</p> <p>24 underlined sentence. What do they say?</p>
<p>1 provided that are now being used in the</p> <p>2 IRR by CVS, correct?</p> <p>3 MS. MILLER: Objection. You</p> <p>4 mean in the IRR that is</p> <p>5 Exhibit 200?</p> <p>6 MR. DeROCHE: Correct.</p> <p>7 BY MR. DeROCHE:</p> <p>8 Q. That's what we've been</p> <p>9 talking about for the last ten minutes.</p> <p>10 I don't think anybody is confused.</p> <p>11 A. I just -- I don't see the --</p> <p>12 I see a lot of those similarities, but I</p> <p>13 also see a model coefficient on the</p> <p>14 retunement document that I do not see on</p> <p>15 the IRR, for the 5.9745.</p> <p>16 Q. On the retuned document</p> <p>17 table, what does that refer to, B-0?</p> <p>18 A. B-0.</p> <p>19 Q. Right. And B-0, you</p> <p>20 recognize as a constant, right?</p> <p>21 MS. MILLER: Objection.</p> <p>22 BY MR. DeROCHE:</p> <p>23 Q. You recognize that. If you</p> <p>24 look at the previous page, you'll see it.</p>	<p>1 Read it for us.</p> <p>2 MS. MILLER: Objection.</p> <p>3 It's not clear this refers to the</p> <p>4 retuned.</p> <p>5 BY MR. DeROCHE:</p> <p>6 Q. Sir?</p> <p>7 A. Are you -- you're referring</p> <p>8 to 4644 Bates number?</p> <p>9 Q. Yes.</p> <p>10 A. So on this -- on this -- on</p> <p>11 this document with Bates number 4644, the</p> <p>12 underlined sentence states, "The model</p> <p>13 has been designed so that any order with</p> <p>14 a score of .15 or higher is identified as</p> <p>15 suspicious, pended, and should be</p> <p>16 investigated further."</p> <p>17 Q. Now --</p> <p>18 A. I don't know if -- I see</p> <p>19 this in the document. And I just -- you</p> <p>20 know, I can't recall if there are other</p> <p>21 documents that would have changed this,</p> <p>22 or there were conversations that, again,</p> <p>23 as this process evolved and changes were</p> <p>24 made -- I can't recall if every single</p>

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<p>1 change, if there's a paper trail document      2 to go with it. I just -- I don't know      3 that.      4 Q. Well, sir, I understand.      5 We've seen a paper trail of documents      6 related to the old algorithm and      7 Mr. Mortelliti doing some testing to      8 determine that .15 wouldn't be used but      9 .65 would be used instead. And that      10 appears to have been carried forward.      11 What I'm asking you is, have      12 you ever seen a document that shows that      13 any testing was done with the retuned new      14 algorithm to determine whether or not .65      15 was more appropriate than .15?</p> <p>16 MS. MILLER: Objection.</p> <p>17 BY MR. DeROCHE:</p> <p>18 Q. You can answer.</p> <p>19 A. I just -- I don't recall      20 that.</p> <p>21 Q. Okay. And you were there in      22 2012, at least as of October, correct?</p> <p>23 A. Around mid-October.</p> <p>24 Q. Sure.</p>	<p>1 drug, rather?      2 A. Yeah, it's Page 39 on mine.      3 Okay.      4 Q. Okay. And if you look at      5 that, what's the score that's associated      6 with that?      7 A. Score, I see in this      8 document, it looks like it's .99.      9 Q. Okay. Do you know if the      10 max is one?      11 A. I don't recall.      12 Q. With a score of .99, do you      13 know of any reason, looking at this      14 report itself, why this particular order      15 would not have been escalated for further      16 review?      17 MS. MILLER: Objection.      18 THE WITNESS: No, I -- I      19 can't really recall to comment on      20 it.      21 MR. DeROCHE: Let's go off      22 the record for one minute.      23 THE VIDEOGRAPHER: Going off      24 the record. The time is 5:38.</p>
<p>1 A. I believe I gave my notice      2 probably at the beginning of October.      3 Q. Again, I wish I had the      4 retunement document in front of me.      5 We're going to waste our last ten minutes      6 going through this. No, the retuned      7 document I'll take a look at.      8 A. This one.      9 Q. There we go. It might be      10 faster if I take a look at this.      11 Moving on to 200 again. If      12 you go to the second -- first page,      13 rather, right behind the table we just      14 reviewed. I apologize. My Bates stamp      15 number is cut off on my copy.      16 A. Looks like 99, maybe.      17 Q. Page 38. Yeah, it's Page      18 38. If you see Page 38 at the top, right      19 above the big black box.      20 A. I see Page 39.      21 Q. 38.      22 A. Store 1431?      23 Q. Store 1431. Correct. It's      24 a hydrocodone order -- or hydrocodone</p>	<p>1 (Short break.)      2 THE VIDEOGRAPHER: Going      3 back on record. Beginning of      4 Media File Number 12. The time is      5 5:40.      6 MR. DeROCHE: Thank you for      7 your time. We have nothing      8 further.      9 THE VIDEOGRAPHER: No      10 questions?      11 MS. MILLER: No questions.      12 Thank you.      13 THE VIDEOGRAPHER: This      14 concludes today's deposition.      15 We're going off the record. The      16 time is 5:40.      17 (Excused.)      18 (Deposition concluded at      19 approximately 5:40 p.m.)</p>

<p style="text-align: right;">Page 486</p> <p>1 2           <b>CERTIFICATE</b> 3 4 5        I HEREBY CERTIFY that the 6 witness was duly sworn by me and that the deposition is a true record of the testimony given by the witness. 7 8        It was requested before completion of the deposition that the witness, FRANK DEVLIN, have the opportunity to read and sign the deposition transcript. 10 11 12        MICHELLE L. GRAY, A Registered Professional Reporter, Certified Shorthand Reporter, Certified Realtime Reporter and Notary Public Dated: January 15, 2019 15 16 17        (The foregoing certification of this transcript does not apply to any reproduction of the same by any means, unless under the direct control and/or supervision of the certifying reporter.) 22 23 24</p>	<p style="text-align: right;">Page 488</p> <p>1        - - - - - 2           <b>E R R A T A</b> 3 4        PAGE LINE CHANGE 5 6        REASON: _____ 7 8        REASON: _____ 9 10      REASON: _____ 11 12      REASON: _____ 13 14      REASON: _____ 15 16      REASON: _____ 17 18      REASON: _____ 19 20      REASON: _____ 21 22      REASON: _____ 23 24      REASON: _____</p>
<p style="text-align: right;">Page 487</p> <p>1        <b>INSTRUCTIONS TO WITNESS</b> 2 3        Please read your deposition over carefully and make any necessary corrections. You should state the reason in the appropriate space on the errata sheet for any corrections that are made. 7 8        After doing so, please sign the errata sheet and date it. 10      You are signing same subject to the changes you have noted on the errata sheet, which will be attached to your deposition. 14      It is imperative that you return the original errata sheet to the deposing attorney within thirty (30) days of receipt of the deposition transcript by you. If you fail to do so, the deposition transcript may be deemed to be accurate and may be used in court. 21 22 23 24</p>	<p style="text-align: right;">Page 489</p> <p>1 2        <b>ACKNOWLEDGMENT OF DEPONENT</b> 3 4        I, _____, do hereby certify that I have read the foregoing pages, 1 - 490, and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet. 13 14 15 16      <b>FRANK DEVLIN</b>                    DATE 17 18 19      Subscribed and sworn to before me this 20      ____ day of _____, 20 _____. 21      My commission expires: _____ 22 23      _____ 24      Notary Public</p>

<p>1           <b>LAWYER'S NOTES</b></p> <p>2 <b>PAGE LINE</b></p> <p>3 _____</p> <p>4 _____</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p>	Page 490